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**A STUDY OF FAMILY MEDIATION DURING DIVORCE IN
THE PAKISTANI MUSLIM COMMUNITY IN BRADFORD:
SOME OBSERVATIONS ON THE IMPLICATIONS
FOR THE THEORY AND PRACTICE
OF CONFLICT RESOLUTION**

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ABSTRACT

Title: A study of family mediation during divorce in the Pakistani Muslim community in Bradford: some observations on the implications for the theory and practice of conflict resolution.

Key words: Conflict, conflict resolution, culture, ethnicity, family mediation, gender, 'race', Islam.

Abstract

Conflict resolution theory and practice have been increasingly criticised for ignoring the centrality of culture in their attempts to find theories and models that are applicable universally, not only across cultures but also across levels of society. Mediation is one form of conflict resolution, which has come to occupy a central position in the resolution of disputes both at international and local levels. At the level of family disputes, family mediation has failed to engage users from different ethnic groups in England and Wales. This thesis explores the hypothesis that culture and, in particular, culturally defined concepts of gender are the important factors determining the success or failure of mediation in divorce disputes.

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INTRODUCTION

Genesis of this research

Initially, this research arose from my own experience as a family mediator, service manager, and trainer in mediation, in a not-for-profit service in West Yorkshire. I was interested in the question of why a particular ethnic minority group, Pakistani Muslims in Bradford, did not use this service in the resolution of divorce disputes. It therefore began with a limited public policy focus. There were virtually no reliable data on the divorce experiences of this group, so that, in a sense, this area of social life was invisible.

While studying for an M.A. in Conflict Resolution, I found that the theorisation of the 'Culture Question' provided a powerful lens through which to conceptualise the research question. This research is therefore located primarily in the academic field of conflict resolution, itself located within the broader field of peace research. Within the cultural paradigm it also explores cultural perceptions of gender, and the power structures within which they are rooted.

Theory, method and analysis

Conflict Resolution as a formal academic discipline emerged in the 1950s and 1960s out of dissatisfaction with the limited perspectives of other disciplines on the nature of conflict and its resolution (Miall et al.1999:40). As an evolving field it has undergone critical evaluation from other disciplines and perspectives, notably anthropology, critical social theory, and gender; these being the critiques central to this thesis. The culture critique is

now relatively well established especially by scholars and practitioners such as Lederach (1995, 1997), Avruch and Black (1986, 1990, 1991), and Cohen (1996). It has developed a perspective that elucidates the Euro/North American assumptions of conflict resolution and in particular the ways in which these assumptions dominate both training and practice. A related, but less developed issue, is whether conflict resolution is generic not only across cultures (that is, pan-human), but also across levels of society (that is, pan-social). Avruch and Black (1986) argued that this is an important conceptual issue for conflict resolution. This research on dispute resolution at a domestic and interpersonal level contributes to the key debate of 'whether the conflict resolution field constitutes a truly global experience ... or is it based on cultural specifics that are not universal' (Miall et al (1999:61).

This research is a qualitative study. It draws on a cultural interpretative framework and focuses on how conflict resolution methods and principles are produced and how they work in a specific cultural and historical setting. It contrasts the meaning attached to conflict, marriage, divorce and family in late twentieth century England with those of the Pakistani Muslim community that settled in England during the same period. It offers a critique of current conflict resolution theory and practice, and in particular of a specific method of conflict resolution, family mediation. It gives a public voice to the narratives of divorce and marriage in a relatively unheard and neglected ethnic minority group. On the basis of these narratives it contributes to a re-conceptualisation of the challenges currently facing mediation at the local and interpersonal level.

The research is built upon a series of questions:

How far is conflict resolution in general and family mediation in particular informed by Euro/North American value systems?

How far are they affected by cultural assumptions particularly in relation to concepts of gender and power within particular cultures?

What are the methods of conflict resolution employed during divorce in this particular ethnic group? What values and assumptions underpin them?

Faced with the challenge of developing a method of conflict resolution that will intervene effectively in a particular ethnic group, how are cultural determinants affecting the current process and how might the challenge be re-conceptualised?

Research strategies

A variety of strategies, methods of data collection and interpretative analysis have been used to provide tentative answers to these questions. At the core is the case study. Semi-structured interviews, each lasting one and a half to two hours, were held with ten women and five men from the Pakistani Muslim community in Bradford, who were, or who had been, going through the process of separation and divorce. These case studies were backed by thirty-two interviews with Pakistani Muslim community leaders, imams, solicitors, and advice and community workers, whose professional work allowed them to make a contribution to the research. There were also four interviews with local ethnic UK workers or researchers in the same field. Towards the end of the fieldwork (most of which took place in 2001), I invited a focus group of six solicitors and advice workers to meet at Bradford University to test out some developing findings from the fieldwork.

A separate case study involved attendance at a two-week training programme, held in London in 2000, for mediators from the world-wide community of Ismaili Muslims. This training programme, the first of its kind for this community, was commissioned by

them, to learn skills and techniques from the western models of family and commercial mediation analysed in this thesis. The training was evaluated both by the participants and, separately, by myself. One year later I had a follow-up meeting with the Ismaili organiser of the training, and with a UK Ismaili mediator, to review their subsequent training programmes with Ismaili communities world-wide.

In addition, secondary sources, books, journals, census returns, newspapers and the internet, were used to give wider demographic patterns of South Asian migration to Britain, and interpretation of patterns of family and community life in these communities. The information on the particular experience of the Pakistani community in Bradford is drawn from the local authority research unit, and primary data deriving from a small number of research projects based on direct interviews with members of the Muslim community (Lewis 1994; Afshar 1989; Mirza 1989; Knot and Khokher 1993).

Focal theory

This research, and the knowledge construction at which it aims, is located in the social sciences. The key debates in this construction are developed helpfully in Smith (1998), and Blaikie (1993), and this section briefly summarises these debates.

To begin with the ontological question: what is the nature of the social phenomenon being investigated here? Approaches to this question divide broadly into the realist and the constructivist, whether social reality is seen as something that exists independently of the observer, or as something which is produced and reproduced by social actors. 'A consequence of this (latter) position is that in any situation there may be multiple realities' (Blaikie 1993:203). Later in this introduction 'ethnicity', 'race' and 'the family' are conceptualised in ways that make the constructivist approach the most appropriate

ontological assumption for this research. Building on this, what Blaikie called the 'classic' and 'contemporary' responses to the question of the relationship between the methods used in the natural sciences and the social sciences are explored. He focused on two classic responses of 'interpretivism' and 'hermeneutics', the insights of the latter being particularly appropriate to this research. Hermeneutics, historically grounded in the exploration of biblical texts, explores the question of how one reaches the objectivity of the one who speaks. Ultimately the aim of hermeneutic understanding is for the researcher to gain access to what is meant in the text or social activity, so that in studying a person from another time, as historians do, or in another culture, as anthropologists do, we understand them in their own contexts. Interpretivism stresses that the study of social phenomenon requires an understanding of the social world which people have constructed and which they reproduce. 'Social reality is the product of its inhabitants' (Blaikie 1993: 48). The task of contemporary hermeneutics is not only to hear the narrative but also to place it in its world-view. It bridges the gap between the researcher's world and the alien world. There is thus no 'objectivity of knowledge'. This definition is referred to later in this introduction when discussing the debates around the effect of the gender or ethnicity of the researcher in interviews. Giddens' structuration approach (1987), which is explored in more detail in Chapter 2, drew on the hermeneutic and interpretivist approaches. Essentially he saw the 'social object' as a skilled social actor, governed by conditions of which s/he is partially aware, and drawing on his/her own resources. This proved to be a useful and creative way of interpreting the data produced in this research, and of conceptualising how individuals are both creatures of their own culture and ethnicity, but also capable of negotiating and developing ways of acting which contribute to, and change, that structure.

To summarise: the phenomenon that is studied in this thesis, the divorce experience of a particular ethnic group, is one which is situated in time, culture and social structure, and which is mediated to the researcher by the description of, and reflection on, the social conduct in which the 'actor' him/herself is authoritative. It takes into account what Layder called 'the layered and textured nature of social reality (its ontological depth)', and therefore requires an epistemological basis which reflects this 'interweaving of the subjective and objective elements of social life' (Layder 1998:27).

The epistemological question of how the researcher gains knowledge about the phenomenon studied, necessarily derives from the ontology. What can be known, and what criteria must the researcher satisfy so that such knowledge is more than just 'beliefs' or unsystematic data? For interpretivists and hermeneuticists, since reality is an interpretation, knowledge is derived from everyday concepts and meanings. Knowledge is gained by entering the correspondent's everyday world. His or her meaning is understood, and reconstructed in technical language. The researcher penetrates the frames of reference which 'lay actors' themselves use in constituting their social worlds. Giddens argued that this can be done by using the same skills as the actors, by respecting 'the human potential to generate historically specific variations in the constitution of social life' (Blaikie 1993:99). Implicit in this approach is the value of enabling and empowering individuals to take charge of their own lives, to voice their own narratives, and to undermine the ideology of dominant groups. This approach allows the experiences of a marginalised group in English society to be heard.

Another key debate in research in the social sciences is the stage at which the researcher moves from data to theory. Is it possible to approach data without explicit

acknowledgement of the theories and concepts that informed the research in the first place? Is it more creative to start with the data and then see what theories emerge from it? What are the respective contributions to be made by inductive and deductive theories in generating and testing conclusions? Grounded theory, with its emphasis on theory being deduced from data, is plainly attractive in researching a little-known theory of social life. Glaser and Strauss (1968) described theory as firmly grounded in data. The researcher observes social relations, collects relevant data and generates theoretical propositions. Research questions are constantly reformulated and tested from the data. Layder (1998), while not refuting the importance of grounding theory in data, believed it is not possible to approach research in a theory-neutral manner. 'It is better to acknowledge, harness and attempt to control the inputs of prior theory and concepts as they intrude or otherwise make themselves felt in the research process' (Layder 1998:4). He argued for the concept of 'adaptive theory' which falls somewhere between the deductive or theory-testing approach, and the inductive or theory generating approach. He argued that it is not sufficient, as grounded theorists tend to do, to ignore the existence of phenomena that are not simply behavioural, and that the researcher must attend to both structure and system. During the process of this research it was useful to reflect on the range of theories which informed it, and to develop and incorporate others as the fieldwork began to reveal their limitations. These guided the lines of questioning, and generated tentative hypotheses. As the data were analysed, it became clear what data needed to be collected next, so that new groups and individuals were interviewed.

The theories and concepts that most informed the approach to the data were the theories of conflict, of processes of conflict resolution, concepts of peace and justice,

and cultural and gender critiques of conflict resolution. Theories of the staged process of mediation as a particular approach to resolving disputes are also integral to this research.

The research therefore makes a significant contribution to the culture, gender and power critiques of conflict resolution and to the analysis of family mediation process in the light of these critiques. Since this thesis is located in the field of conflict theorising, it is interesting to note the approach of a nineteenth century mathematical philosopher, Charles Sanders Peirce. In the late 1960s his writings were recovered and seen as useful to students of the problem-solving process in conflict resolution, and were used by Burton in his methodological approach (1990:19). Peirce stressed the need for imaginative hypotheses, based on existing knowledge and insights, which he called the abductive process. These hypotheses could be tested on empirical grounds but instead, since it is often not possible to do this in the field of the social sciences, a common-sense, analytical approach could be adopted. This process he called retrodution. It is a useful distinction to make in the context of this research since, as is argued in Chapter 6, some theories of conflict resolution cannot be tested empirically at the local level, and can therefore be criticised only on 'common sense' grounds.

Methodological problems

The *limited nature of the data* initially gave cause for concern. Because of the religious and political sensitivities of this area of research, I had to rely on 'word of mouth' introductions and the 'snowball' approach in gaining access to interviewees. Only a small number of men were interviewed, and I have made no attempt to gain a representative sample on the criteria of age, education, place of birth, and religious affiliation to particular Muslim sects. There are questions of how far one can generalise from such a small sample, albeit one

backed by extensive interviews in the community. It is helpful to place the research in the context of other in-depth studies of hitherto unresearched areas, such as those described in Layder. He defined its 'logic and power' as lying in 'selecting information-rich cases for in-depth study' (1998:46), and suggested credible approaches to theorising on the basis of the findings. Layder also addressed the question of whether the researcher is aiming only at the reportage or description of local narratives. He considered the post-modernist critique of research, which denies any attempt at the construction of 'grand theory', or indeed any attempt to *explain* rather than to *describe*. He argued that while the researcher's task is to 'give voice to particular groups and/or to faithfully depict their meaningful social worlds and their subjective experiences' (Layder 1998:8), there are nevertheless systemic aspects of society which connect with these everyday worlds. The systemic data yielded from the fieldwork will be used to contribute to the wider theories from which this research began.

More difficult to address, although not entirely unanticipated, have been issues about the '*race, gender and religion of the interviewer*'. Rhodes (1994) considered the significance of 'race' in the interview situation, and explored it using data from a survey of accounts given by black foster-carers of their experiences of selection. She privileged 'race' over ethnicity, since she was centrally concerned with the effects of race in the interview encounter. The idea that some accounts are more 'accurate' or more 'genuine' than others underlay many of the criticisms of cross-racial interviewing. Critics argued that racism was an inherent feature of British social life and that mistrust of white people would transfer to the interview, distorting the quality of the interview. Accounts are thus treated as accurate or distorted representations of a single reality, rather than seeing that reality as a contingent and creative mapping of a multi-faceted reality. There is little

research in British literature on racial issues in interviewing. From my own experience during this research it seems that an outsider can have 'stranger value'. Initially I hoped to include an African Caribbean sample from Brixton in this research. The pilot interviews were unexpected in that the participants wanted me, as a white person, to understand the dynamics and personal experiences of racism, before I could begin the interviews. With a black interviewer this would have been taken for granted, and therefore unexpressed. Such experiences would have been unheard and unvalued, and the opportunity for ethnic UK persons to hear moving and disturbing accounts would have been lost. Race and racism were never so explicitly referred to in the interviews on which this research is based, but they took place in the context of civil unrest in the community, and of the emergence in the majority society of more hostile attitudes to Muslims.

Roald (2001) argued that researchers face huge problems in researching Muslims in the European context. She argued that Muslims have distorted views of the west, as does the west of them, and that they often 'role play' in their cultural encounters with researchers, particularly in assuming that the researcher will not be interested in the interplay between religious and secular worlds. However, factors other than race may limit or affect the data obtained in interviews. The fieldwork interviews contained questions about marriage and divorce, and in turn questions were asked by participants about my professional experience in this area, and my personal reasons for undertaking this research. The commitment to researching how provision might be improved, and the ways in which their experiences could be used to help this process, was accepted as a reason for the interviews. The University of Bradford was perceived as neutral, with an acceptable commitment to peaceful resolution of disputes. If it arose, the funding by a relatively

unknown religious body (The Society of Friends, known as Quakers) was taken by some as an indication of a basis to the research that would acknowledge a religious sensitivity. This does not deny the fact that in some situations, and for some questions, the 'racial' matching of the interviewer and participant may be appropriate. The purpose of this discussion is primarily to undermine the concept of a hierarchy of accounts, evaluated in terms of 'truth' status.

A parallel debate has arisen over the impact of *gender* in interviews. It has been argued that women communicate their personal experiences through an oral culture untapped by social scientists who are, typically, men. Oakley (1981) argued that sociology has mirrored society in its concentration on the scientific and measurable aspects of social life, and that a feminist approach to interviewing should aim for a non-hierarchical and relatively intimate relationship which becomes a tool for making possible the articulated experience of being female in a patriarchal society. This debate was developed by Hammersley, Ramazanoglu and Gelsthorpe in a series of articles in *Sociology* (1992). Gelsthorpe particularly addressed issues of power and control in the research process, and argued for a more sophisticated approach to the process of information gathering. Gelsthorpe also noted the different epistemologies arising from different feminist theories.

The intimate and open nature of many of the female accounts could, it may be argued, sometimes be a direct response to my gender. But such openness was not lacking from the men, once rapport had been established. In these interviews gender is implicitly present as a factor in this research, not only in the unwillingness of males to be engaged in interviews, but also in their difficulty in expressing feelings about an intimate and painful experience. This is a difficulty not confined only to Muslim males, but affects the take-up

of health and personal services in the ethnic UK male population. Husain and O'Brien noted the 'unwillingness of men to participate in the problem-solving process in the area of changing concepts of fatherhood in a Muslim context' (1996:60). Roald, herself a convert to Islam, argued that the distinction between male and female in Muslim communities is more pronounced than in others. Therefore in research, men and women have access to different information. 'A female researcher who wants to interview a male might find difficulties in communicating due to invisible barriers' (2002:76). She advocated using a male Muslim interviewer as a colleague. The complexities of power in the Muslim community in Bradford (which are explored later), and of divisions of caste, generation and religious affiliation make the selection of such a colleague a sensitive one. Nevertheless, it is an approach that could usefully have been attempted.

The issue of *shared religion* between the interviewer and the participant is one of particular relevance to research into the Pakistani Muslim community in Bradford. In Chapter 3 the continued importance of religion in the self-definition of this group is explored, although describing oneself as a Muslim does not necessarily imply religious observance. Roald (2002) warned that a particular pitfall for non-Muslim researchers is to ignore differences of nationality, class, religious affiliation, and differences within nationalities, and to fail to make a distinction between cultural and ethical Islam. She acknowledged that an Arab Muslim might therefore have difficulties in communicating with a South Asian Muslim. This acknowledgement of differences between Muslims of different nationalities has direct bearing on the sometimes naïve assumptions about who would be an effective third party in disputes in this ethnic group. Some of the community leaders in Bradford, who were of East African Asian origin, were honest about their

difficulties in engaging with the outlook of Pakistanis from a rural background, despite their shared religion. Roald asked whether it is easier to gain access to another Muslim's inner reality if the interviewer is a Muslim. We are returning here to the idea of 'real truth', and the limitations of this concept have been explored. Roald argued that, as with information about 'race', the information that a non-Muslim gains is different from that obtained by an insider. In some cases she thought that a religious Christian might have more in common with a religious Muslim than with a secular member of ethnic UK society. Conversely, I found that some of the interviewees wanted a non-religious viewpoint in discussing their experiences. Roald argued that in general it is easier to enter another's world-view if one shares it. Shah Kazemi argued forcefully that the third party should be an insider, and that the participants in her research (2000) had all expressed the view that being interviewed by a Muslim woman was preferable. However, since the question posed (2000:51) covered both the gender and religion of the interviewer, it is not clear to which aspect the interviewees were responding.

A third and related methodological problem was that of *culture*. The most significant debates about the culture of the interviewer in cross-cultural research, (the concept of the researcher as a cultural agent) have been developed in the field of social anthropology, and are central to this research. The approach adopted in this research is close to that of ethnography, which Fielding defined as 'a form of qualitative research which combines several methods, including interviewing and observation' (1993:5). 'As a means of gaining a first insight into a culture and social process ... it is unparalleled' (1993:10). In conducting research into a distinctive 'other' culture, one has continually to acknowledge one's own cultural constructs, particularly taken-for-granted assumptions

about marriage, the family, gender roles, and the use of force in relationships. Hastrup (1992) regarded the ethnographer's biography as decisive for the outcome of the research, since the reality experienced in the field is 'not the unmediated world of the "others", but the world *between* ourselves and the "others"' (quoted in Roald 2002:75).

As the interviews progressed the role of the researcher changed. It moved from the traditional view of the interviewer as the detached, non-involved professional, to what Mischler (1986) defined as the more radical one of giving the interviewee freedom to develop his or her own narrative, retaining 'their right to name their world' (1986:6). The interviewer became the 'acceptable incompetent' (Fielding 1993:158), and was prepared to be surprised, to share feelings and to say openly that the success of the research depended on the interviewee's knowledge and experience. The problem for the researcher is that the cultural study cannot be entirely objective, and the researcher has to be continually reflexive.

Ethical issues in the research

Frankfort-Nachmias and Nachmias (1996) considered that the key ethical dilemma in social research is the conflict between the researcher's right to conduct research and to acquire knowledge, and the right of the individual to self-determination, privacy and dignity. At its most stark, it is the conflict between public benefits and civil rights.

One assumption behind this research was that the data collected could, among other things, significantly contribute to the sensitive provision of services to couples going through divorce and separation. It could provide clients from different ethnic minority groups with a significant degree of choice that may not now be available to them. But the research focused on a sensitive and private area of social life, in which the role of the

family and the definition of gender roles are, as will be argued in Chapter 2, seriously contested both within ethnic English society and between the majority society and particular ethnic groups. Many aspects of Asian family life have been the target of hostile comments from the host community, and there is the danger that the findings of this research could be used by others who are hostile to the distinctive features of ethnic minority families.

Frankfort-Nachmias and Nachmias (1996) pinpointed two central problems in the consideration of balancing costs and benefits in research. They are the issues of *informed consent* and *privacy*.

Informed consent

They argued that this principle is rooted in the value that we place upon freedom and self-determination. They defined informed consent as 'the procedure in which individuals choose whether to participate in the investigation, after being informed of the facts ... likely to influence their decision' (1996:18). As will be argued in Chapter 2, family mediation is based on embedded values, some of which are culturally determined, and some of which may be antipathetic to some members of particular ethnic minority groups. I would include in these the emphasis on equal access for women to money, property and a fair deal in post-divorce maintenance. Frankfort-Nachmias and Nachmias suggested that too much information might have destructive effects on the involvement of the participants, and on the outcome of the research. Goode argued that researchers may have to conceal information from participants and, even that 'a contract of dishonesty is implied in intimacy' and that 'deception can create material' (1991:25). Tactically, I found that when engaging relatively powerful individuals in this research, I emphasised some aims, such as

to provide a service that is sensitive to diversity, and gave a lower profile to others, such as engaging in gender issues.

Gilbert (1993) noted that, in general, research is conducted on weak and vulnerable groups in society who may have fewer resources to defend themselves against researchers, and who may, in agreeing to be interviewed, have a less sophisticated understanding of the aims of the research and of any element of risk. The researcher has the responsibility to present the research in non-technical terms, in language appropriate to the interviewee, and to ask questions which test comprehension, making clear that the participant can withdraw without prejudice. The possibility of physical risk to the participants in this research is a real one, especially for the women who might be identified. At the contracting stage, the issue of safety was raised by the researcher, and key promises were made about hiding the identity of the interviewee and obscuring any details that might identify them.

Privacy

Frankfort-Nachmias and Nachmias considered that there are three dimensions of privacy: the sensitivity of the information, the setting of the interview, and the dissemination of the information. Goode (1996) critically examined the style of the research interview, where, in some cases, the charm and friendliness of the interviewer were used to facilitate the interview, so that the interviewee forgot that he or she *is* being interviewed. This may particularly be true for isolated or vulnerable individuals who rarely have the chance to be heard. The researcher has to continually refer to the original contract that was agreed as to the purpose of the research, and be prepared to delete material, however rich and exciting it might be.

It was important to be clear who had access to the transcripts and to the study, especially when this is held on computer, and when an individual might be matched to certain information. There was an issue as to whether the participants could control what is written, and whether they had the right to participate in discussions arising from the research. I undertook to circulate all participants with a summary of the research, and to offer the chance of individual or group discussions on the outcome.

There appear to be relatively few codes of practice that address the particular issues raised in cross-cultural research. Frankfort-Nachmias and Nachmias quoted a composite code of ethics, based on twenty-four separate codes of ethics in the conduct of social research. Only one of these codes addressed the issue of ensuring that studies of cultural sub-groups produce knowledge that will benefit them (1996:3). Two stipulated that the findings should be published in terms understood by the particular group, thus giving these groups the chance to challenge and debate the findings. The focus group, conducted during the final stages of the fieldwork, allowed me to test how far some of the findings of the fieldwork were already openly discussed. This discussion revealed the extent to which there was division in this community about what issues relating to family life were seen as important to be made public, and what were seen as needing to be hidden, and why. These are political questions. I take the value stance that in a democracy it is important that all voices are heard, and that the powerless and the neglected can make their feelings public even if it is against what dominant groups may wish to hear.

Definitions of key concepts

Conflict

It is difficult to achieve an unambiguous definition of the term that is not so broad as to be of limited use in discussion. Miall et al. defined it at the most basic level as 'the pursuit of incompatible goals by different groups' (1999:19). The term can cover a variety of levels from armed conflict to non-violent social disagreements, thus demonstrating its 'catch all' nature, sometimes used synonymously with 'dispute' or 'disagreement'. The term is also used in different ways within academic literature as opposed to common usage. For the purposes of this thesis it is defined as 'incompatibility of goals and interests between groups and individuals', with the assumption that it covers both 'negotiable interests that can be settled by compromise' and 'deep-seated conflicts that involve human needs, and can only be resolved by removing the underlying causes' (Miall et al 1999: 20).

Conflict Resolution

There are various terms used in the academic field that describe not only the search for a solution to conflicts but also the area of academic study. These terms are variously: conflict regulation, conflict management, conflict resolution and conflict transformation. These terms are often used interchangeably, but each implies a wide variation in defining the methods of achieving an end to conflict, and a definition of what 'ending a conflict' means. Bloomfield (1995) defined a 'pervasive dichotomy' in the literature on conflict management, based on a distinction between views of conflict as essentially subjective, or essentially objective, each definition having significant implications for the prescription of subsequent management of the dispute, requiring either conflict *settlement* or conflict *resolution*. This dichotomy is explored in greater detail in Chapter 1, but for the purpose of this thesis the term 'conflict resolution' is used throughout as a neutral umbrella term. It

covers both the field of study and the process of seeking an end to conflict. This created a problem when I had to find a term to describe the indigenous processes of conflict resolution during divorce in the Pakistani Muslim community, since the process contained no elements of resolution, but was closer to conflict settlement with elements of coercion. Therefore 'conflict resolution' is used with no implicit assumptions about the nature of the process, or with criteria for the outcome.

Culture

The concept of culture is of central importance in this thesis, and again is an enormously complex term. Duffey (1998) noted that it has been a significant term in the fields of psychology, health and medicine and has had a central role in many fields of enquiry. She argued that 'hundreds (of definitions) exist, though a commonly accepted definition has not been derived' (1998:5). Definitions derived from the work of two anthropologists were used in this thesis. Merry (ed.) (1987:2) suggested,

Culture consists of both explicit rules, beliefs, values and symbols, and implicit, unrecognised sets of meanings, metaphors, stories and discourses through which experience is interpreted and which are unconsciously reproduced as part of social life'.

In more simple terms, Cohen defined culture as

A system of meanings and values shared by members of a community, thus informing its way of life and enabling it to make sense of the world (1996:109).

Both these definitions were adopted by Duffey.

Family mediation

The focus of this research was *divorce mediation* as a specific aspect of *family mediation*. Divorce mediation is only one form of family mediation as it is generally practised. Other forms of family mediation may include mediation between teenagers and parents, or between grandparents and parents. The professional literature consistently uses the term 'family mediation' to describe this area of dispute resolution between separating and divorcing couples. The term is therefore used throughout. As with 'conflict resolution' the term covers many types of intervention in divorce disputes, with different underlying assumptions about process and outcome. A fuller discussion of this is developed in Chapter 2. For the purpose of this thesis, family mediation was generally used to mean, 'a form of intervention in which a third party (the mediator) assists the parties to a dispute to negotiate over the issues which may divide them' (Roberts 1997:4).

'Race' and ethnicity

These concepts and the meanings attached to them are fundamental in this research, both for an understanding of the interpretations of the demographic data, and for theorising about the experiences described by the participants.

When the concepts of 'race' and ethnicity are explored, a relevant area of contemporary debate is entered. Brah (1994) commented that the word 'race' is still highly contested, and there is immense interest today in the concept of ethnicity. She broadly defined 'race' as an imaginary biological principle that classified people into races on a hierarchical principle, which derived from scientific discourse. This discourse had the authority to 'mark hierarchies of 'race', class and gender with 'grand narratives' of development, which legitimised social inequalities in the global context of European expansion'(1994:805). She regarded the concept of 'race' as now discredited, and yet there

is a continuing controversy among scholars about the use of the term. Many argue that since we continue to treat it as 'real' and to use it in everyday parlance, it is therefore a legitimate concept for analysis. This has been challenged as reinforcing the legitimacy of the term as having biological connotations. These definitions are of crucial importance when we explore how social agencies in Britain in the 1980s and 1990s tried to make their services more available to users from ethnic minority groups, a debate with which Irving and Benjamin (1995) considered that family mediation services are only just engaging.

Law (1996) argued that by the 1990s there was a growing perception in the public services that there was a failure of contemporary modes of policy formation, and that citizens from ethnic minority groups continued to be subject to inappropriate services. He considered that innovative conceptual work was needed to reinvigorate the field, and that this provided a fertile field for the reception of post-modernist ideas in the theorisation of 'race' and ethnicity. Donald and Rattansi (1992) described two movements, which offered polarised solutions to the problems of delivering services in an ethnically diverse society. Multi-culturalism perceived the key issue as being one of attitudes, and of creating tolerance of cultures. Anti-racism saw analysis of culture and ethnicity as a diversion from the fact that racism is a common experience for all Black people, and that in concentrating on ethnicity, issues of gender, racism and class are ignored. The anti-racist project was a limited one of removing racism and of mobilising Black support across ethnic difference. Both these approaches are criticised as occupying the same conceptual ground; that is, they embody an essentialist view of race and ethnicity as having fixed forms. Jenkins (1994), rethinking the concept of ethnicity, drew on the contribution of Barth (1969) whose conceptualisation exercised a major influence on British studies in this area. Barth

challenged the then dominant socio-anthropological approach that saw individuals as more or less determined 'bearers' of the norms and values of their cultures. Barth's contribution was to define ethnicity situationally, as produced in the course of social transactions that occur across boundaries. He later gave greater importance to history, both as providing the here-and-now context and as a stream of tradition of which people are aware. Jenkins considered that ethnicity is therefore not only about how we define ourselves, but also by how others see us and how we are categorised; a process which may strengthen existing group identity through the process of resistance and reaction. Thus ethnicity is not some objective criteria of cultural difference but 'the process whereby one group constructs its distinctiveness by reference to another' (1994:207).

Hall considered that, once we have moved beyond the definition of ethnicity in essentialist terms, we have to accept that 'if the Black experience and Black subject are not stabilised by nature or some other essential guarantee, then they are construed historically, culturally and politically ... the concept which refers to this is ethnicity'. (1992:57). Not only does this entail recognition that ethnic identities are not purely static, but rather they change in new circumstances and they share space with other heritages. Ethnic minority identities are thus not just products of extra-British origin, but they contribute to and are influenced by British life, and the dichotomy of 'essentially Black' and 'essentially British' breaks down. Gilroy (1992) considered that the new racism, which breaks down hitherto racially-described groups into 'ethnic essences', has developed in a society at a time of painful transition, when we have become preoccupied with notions of race and national identity, and whilst the sense of a unified cultural community is under attack. This debate is

discussed at some length because it contributes crucially to this research, and particularly indicates its politically and socially sensitive nature.

'Family' and 'Divorce'

These concepts appear initially to be less problematic than the terms already defined. Definitions of these terms in their historical and cultural contexts are explored in Chapter 2. At this point approaches to discourse analysis are examined as contributing to ways of conceptualising family and divorce that are helpful to this research. Smith (1998) defined two types of discourse analysis: the first, discursive psychology and the second, post-structural discourse. Central to these approaches is the importance attached to the definition of language.

Smith examined the role of language, discourse and culture in the construction of meaning, and in particular focussed on how language is used by people and how meanings are communicated. Smith referred to the work of Potter and Weatherill (1987) who defined language not simply as a way of describing the character and form of things but also as a lived activity, one which involves intentions and meanings. An example of this is the way a doctor's diagnostic label of a patient not only describes the illness but also determines attitudes toward the patient. The research implications of this approach to language are that when we try to represent a phenomenon, the powers of metaphors and similes are acknowledged. (1996:109). If this thinking is applied to the 'family' and 'divorce', divergent discourses begin to emerge. One discourse on the family would include terms such as 'bedrock of society, source of social stability, imperilled'. A rival discourse would use terms such as 'oppressive, post-patriarchal, fluid, transitional'. The meaning of the term

thus becomes deeply contested and open to interpretation, as the discourses reflect profound changes in British society.

The second type of discourse analysis, post-structural discourse, considered the issues involved in representation, and investigated the ways in which knowledge is produced in a shared cultural context, and within distinct historical circumstances. Foucault (1970, 1972, 1980, quoted in Smith 1998: 255/6), and Derrida (1973, 1976, 1978, quoted in Smith 1998: 255/6), are key thinkers in this field. Foucault distinguished between the denotation of a word and its connotation. He defined the denotation of a word as essentially an empty signifier, which can carry a whole range of meaning. An example of this would be 'divorce'. Its connotations would be a whole raft of emotional, religious, legal and political meanings, which would have to be deconstructed. According to Foucault, nothing has meaning outside discourse; nothing has the same meaning across historical periods. Foucault suggested that, in our attempt to understand a phenomenon, we 'map the conceptual landscape' rather than 'mine for gold'. The relevance of this discussion to this research is important. The researcher is not observing a phenomenon such as 'an Asian Family' but mapping a discourse within which individuals try to make sense of their lives in the context of a struggle for the dominance of ideas. In this discourse, economic and structural factors that affect the operation of power in the family, assignation of gender roles and assumptions about property, finance and the rights of children, are pervasive in whatever ethnic group the discourse has developed.

Thesis overview

Chapter 1 focuses on the culture critiques of conflict resolution developed by Avruch and Black, and by Lederach. It examines arguments against the assumption that conflict resolution has universal applicability across cultures and across levels of society. It offers an overview of some key debates in conflict resolution theory and practice, which inform and clarify thinking about conflict, conflict resolution, peace and third party intervention. It also discusses the contribution of critical social theory, especially to the development of theories of gender and power.

Chapter 2 examines the development of family mediation in England and Wales since the 1980s, and its roots in the Alternative Dispute Resolution (ADR) movement in the USA. It defines the theory and practice of family mediation and its particular organisational development in the UK. Family mediation is placed in the context of profound changes in the family in Britain in the second half of the twentieth century, and the sociological theories that have attempted to explain these changes are discussed. The legal and social policy context is explored. Family mediation is also analysed using the analytical categories of culture and gender.

Chapter 3 gives a broad overview of South Asian migration to this country since World War Two, with emphasis on family change and adaptation. It analyses the distinctive position of the Pakistani Muslim community in Bradford, and introduces key concepts of Islamic family law and its relationship to family law in Great Britain.

Chapter 4 introduces the core case study of this research, that is, narratives of marriages and divorce of fifteen participants from the Pakistani Muslim community in Bradford. These narratives are developed and supplemented by thirty-two community interviews. The data have been coded according to themes, and the chapter is organised on the basis of these themes.

Chapter 5 introduces the second case study on which this research is based, the observation of a training programme for Ismaili Muslims. The implications of the training and its later implementation for the development of a culture-sensitive model of conflict resolution in a particular world-wide Muslim community are developed.

Chapter 6 develops the themes that arise from the data, and asks what are the implications for the theory and practice of conflict resolution.

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CHAPTER 1

Conflict Resolution: an overview of theory and practice.

Introduction

This chapter sets out a broad overview of conflict resolution theory and practice. The argument is offered that although the conflict resolution field postulates the relevance of its concepts across all domains of conflict, from the international to the interpersonal, the field of Alternative Dispute Resolution, in general and the field of family mediation, in particular have not yet been opened up to this kind of analysis.

The chapter includes exploration of the broader field of conflict theory, particularly the debates about the scope of the conflict resolution project, and the different processes of settlement, resolution and transformation of conflict. It moves on to theorisation of the mediation process and its effectiveness, and concludes with the culture, gender and power critiques of conflict resolution that have developed mainly from the field of critical theory. Chapter 2 then explores how far these debates have pervaded the family mediation field, and begins the exploration of how far they are useful to the analysis of disputes at the interpersonal level.

The generic debate

The debate as to whether the theory of conflict resolution can be pan-human (that is, applicable across classes and cultures) is addressed later in this chapter. Here, the question is raised as to whether it can be pan-social (that is, applicable across all levels of society). Miall et al set out a clear approach to this question.

A group of pioneers ... saw the value of studying conflict as a general phenomenon, with similar properties whether it occurs in international relations, domestic politics ... families or between individuals (1999:1).

We introduced well-known theories of conflict from the conflict resolution tradition. These generic models are intended to apply, with variations, to all human conflicts, and at all levels of conflict (from interpersonal levels upwards) (1999: 66).

Avruch and Black addressed the same issue, as part of their debate with Burton. They argued (1987) that Burton's theory of conflict is postulated on a set of human needs that are held to be universal. Therefore not only are issues of class, gender and culture secondary to these needs, but in its range of applicability, it is valid 'at all levels of social intercourse, from interpersonal, marital and domestic to international'. (1987:87). Avruch and Black argued that underlying this theory is a particular theory of society, that 'individuals take analytical priority over social structures and institutions at any level, and that the behaviour of human beings is motivated at every level by a set of universally distributed human needs' (1987:95). The main focus of their critique of Burton is to present the alternative of giving primacy to the concept of human culture. 'One cannot escape culture by asserting human nature' (1991b: 25).

How we resolve this debate has important implications both for mediation practice and training. Is each level of conflict essentially idiosyncratic, with no comparable features or does it exhibit universal features which allow for universal approaches to its analysis and resolution? Avruch and Black believed this to be one of the most important conceptual issues that trouble the conflict resolution field. Taken to its logical conclusion a UK

mediator trained in divorce mediation would have the conceptual tools to allow him or her to work effectively with a conflict in the Middle East, allowing for cultural awareness. This is one of the themes that are explored in this thesis.

Definitions of 'conflict', 'peace' and the scope of the conflict resolution process

Conflict

Early theorists in the field of conflict resolution built on the experience of mediation in industrial relations and communities, and applied the theorisation to conflict across the board. A prominent thinker from this era was Follet (1942), who developed the mutual gains approach to negotiation, with the aim of achieving a convergent approach, as opposed to the traditional distributive bargaining agenda. The mutual gains approach saw the negotiation process as aiming at joint problem solving, an approach which was later developed in Burton's thinking (1990) and which remains a strong element in the theoretical basis of family mediation as it has developed in the USA and in Britain.

As the developing discipline of conflict resolution faced the challenge of the Cold War, and the complexities of intra-state conflicts, new ideas of conflict resolution developed with a perceived relevance to real conflicts in the international situation, in South Africa, the Middle East and Northern Ireland (Miall et al. 1999:2). Wehr (1979) listed major schools of analysis of conflict, some of which contain irreconcilable differences. Is conflict generated by dysfunction in the structure of society or is it innate in human beings? Is it a symptom of strain or necessary for social development and intrinsically healthy? Moreover, different types of explanation can become politically compromised. Whyte (1990), quoted in Miall et al (1999:67), showed how explanations of

the conflict in Northern Ireland can derive from academic theories, that appear to be neutral, but which then become partially implicated in the struggle. Using this example and applying it to theorising about the conflict in divorce, diametrically opposed explanations are offered. Is divorce due to the growing awareness by women of the dysfunctional nature of the patriarchal family, and their rejection of it? Or, has there been a decline in personal morals in wider society, so that individuals now place personal fulfilment above the needs of children and the family? Whichever, if either, of these explanations is accepted, the process of resolution will be affected by the theory of conflict.

If explanations are sought for the increase in divorce in the Pakistani Muslim community in Bradford, they will locate it in personal, structural, cultural and historical contexts. This encompasses a crucial activity which Wehr (1979) defined as 'conflict mapping', a stage in helping the intervenor and participants to understand the nature, origin and dynamics of the conflict. In searching for a way of theorising about conflict in general, a key question emerges. What is the scope of the conflict resolution agenda? To put it simply, when the outside party has made an attempt to map the conflict and to arrive at an explanation, at what level or levels is it appropriate to intervene, and using what processes? It is in attempting to answer these questions in relation to conflict at the international level, that conflict resolution theory and practice has drawn the parameters of the debates.

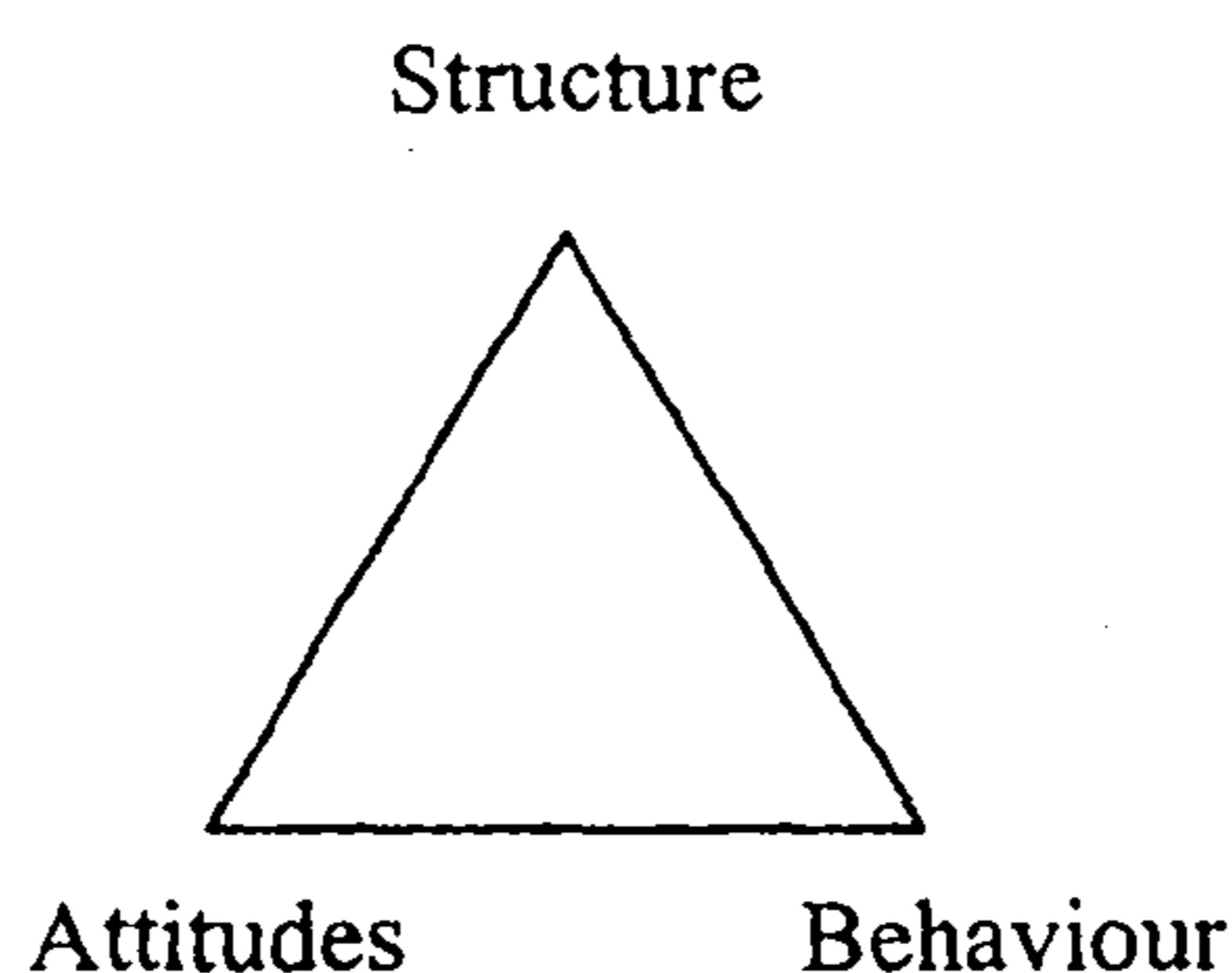
Bloomfield's (1996) analysis of what he called the pervasive dichotomy in the conflict resolution literature between those who see conflict as essentially subjective and those who see it as objective is relevant here. The subjectivist position gives pivotal importance to the roots of the conflict as lying in the relationship of the parties. The objectivist argues that the conflict stems from goal incompatibility and that there is a 'true

situation' which can be revealed. Each position has significant implications for the subsequent process of resolution and for the relative merits of different forms of third party intervention. Bloomfield broadly categorised the different approaches to reaching a solution to the conflict as *resolution* and *settlement*. Resolution is an approach that recognises the subjective nature of the conflict, and 'prescribes an outcome based on mutual problem sharing in which the parties co-operate to redefine the problem and their relationship' (1995:152). Proponents of the approach include Burton (1987, 1990. R. Fisher (1972, 1983) and Curle (1986). The settlement approach prescribes an outcome achieved by negotiation and bargaining, with the aim of settling an issue or issues, usually by compromise. Underlying this approach is a view that conflict is generated over objective, power-related issues, and in action it relates closely to the power position of each side. Proponents of this approach are Bercovitch (1984) and Touval and Zartman (1985).

Each approach has attracted criticism, the resolution approach for its lack of realism and the settlement approach for its superficiality. There have been attempts, notably by Fisher and Keashly (1991), to theorise a possible complementarity of these approaches, related to the nature and stage of the conflict. Of particular interest for this thesis, given the controversial nature of third-party intervention, these approaches each assume a type of intervention that is appropriate to each stage of the conflict. The resolution approach assumes that the third party's role is one of facilitation, without any powers of coercion, or preference for any particular outcome. Settlement requires an active and initiating role for the third party, which can legitimately use bribery, coercion or "leverage" to achieve a settlement.

It is useful here to note Beckett's (1997) extensive critique of the subjective/objective dichotomy and its relevance to the analysis of the conflicts that are the source of the data in this research, since he introduced a theorisation which allowed for the significance of culture. Beckett argued that this conceptualisation of conflict (between subjective and objective) needs fundamental revision. He pointed out that the epistemological distinction between subjective and objective has been extensively criticised by post-modernists. The objective is bound by our culture, our conceptual schemes and our language. If this critique is applied to conflicts which are the subject of this research, it is obvious how the dichotomy breaks down. The 'objective' elements of property, finance and the arrangement for children are seen to be perceived subjectively, and the values that are attached to them are derived from culture and religion, that is, from structures, which shape the subjective and objective elements of the dispute. Thus, if conflict is defined as a matter of perception and belief we are introducing the concept of culture.

Galtung (1989) introduced a *model of conflict* that provides a conceptualisation of these components. He expressed it diagrammatically thus:



Source: Galtung 1989

Structure refers to the conflict situation, the parties and the conflict between them. It may be a conflict over an interest, about values or about relationships. Beneath the structure lie *attitudes* and perceptions, the parties' views of each other, their feelings and beliefs. *Behaviour* may be hostile or conciliatory, and may include gestures and communications. Galtung saw this as a dynamic model of conflict, as the three components continually change and influence each other.

A related, and crucial concept is that of 'symmetrical and asymmetrical conflict', which Galtung saw as encompassed in the model. The disputes which are the subject of study in this research are conflicts not only about interest (property, children), but also about values (what is appropriate for spouses to expect of one another, and how is family life to be conducted?), and about relationships (how have this man and woman behaved in this intimate relationship?). It is in the area of relationships that asymmetry is revealed. One party may be benefiting from a balance of relationship at the expense of the other, and will have no interest in seeking change.

The conflict resolution agenda

Curle (1971) and Lederach (1995) have been most influential in developing a model of how power operates in conflicts, and how conflict resolution might address it. The thinking of these peace researchers has significantly contributed to the broadening of the conflict resolution agenda to a more radical one that includes the concept of a *transformation* of conflict. Lederach argued that the passage from conflict to resolution may involve a temporary increase in overt conflict as people become aware of imbalances of power, as they organise themselves to address the injustice and confront it, and finally negotiate with those who hold the power, and achieve a restructured and more equitable

relationship. Curle proposed a response that followed a similar pattern. It involved facilitating increased awareness, followed by mobilisation and empowerment. Within this process may lie the traditional elements of conflict resolution, i.e. mediation, changing attitudes and working for a changed relationship, but by themselves these strategies are inadequate in a profoundly asymmetric conflict. This conceptualisation of power conflicts containing power imbalance is, as will be shown later, of central importance to this research, since the disputes revealed in the narratives were founded on unbalanced power structures. The implications of Galtung's model of conflict are that, to resolve the conflict, all three components of the model must be addressed. In addressing structure, issues of power and justice are tackled, as are both normative issues of how to define a just peace or, in the case of family mediation, a fair settlement, and also the wider question of what conditions in society most contribute to conflict or to its opposite.

Galtung's broad agenda for conflict resolution has not been without serious critics, and the struggle to define the scope of the project continues to be alive. At the heart of the debate is the fear that, in expanding its agenda to include issues of social justice, the conflict resolution discipline may lose focus and intellectual rigour. Boulding criticised Galtung for his unquestioned vision of a world organised on principles of equality, without structures of dominance and hierarchy, and for his assumption that the conditions which lead to poverty and inequality are also those which lead to violence. Boulding argued that Galtung had failed to understand the cost to liberty of working for equality, and preferred to use the metaphor of 'system strain' to explain conflict and violence rather than 'structural violence'. The strategies for dealing with strain would not encompass wholesale structural change, but might include either strengthening the system or reducing the strain. This

represents a minimalist approach which Galtung refuted (1987). He argued that Boulding underestimated the fundamental role of structurally induced inequality in human affairs and that, in particular, Boulding ignored "exploitation". He argued that the removal of gross structural violence is a necessary condition of stable peace.

This debate illuminates a question that arises in this research. Is the growth of divorce conflict to be seen as a reflection of 'gross structural violence' needing wholesale change, or as evidence of 'strains' within a viable institution which could be met by improvements which strengthen the institution, for example, benefits and employment patterns? It is argued later in Chapter 2 that this issue is essentially a political one, and the range of answers is contested.

Curle's term 'structural violence', is taken from a related idea developed by Galtung (1981) that in defining conflict it is important to distinguish between direct cultural and structural violence. He defined structural violence as that which derives directly from the organisation of wealth and relationships in a society, direct violence as acts of physical and mental violence, and cultural violence as the attitudes which sustain or justify such structures and acts. Applied to divorce, an example of structural violence could be a legal system, such as existed in England and Wales in the nineteenth century, which denied to married women the right to own property or to gain access to divorce. An example of direct violence would be the incidence of domestic violence (Hester and Radford 1996), mainly directed against women. Cultural violence would be defined as the gendered views of men's and women's roles, which justified the behaviour and the legislation. If this three-fold approach to violence is adopted, the issue could be conceptualised using the three elements of conflict in Galtung's triangle. An historical perspective suggests that

addressing only structural violence (e.g. by giving married women the right to own property in 1868) left awareness of the incidence of violence against women in the home untouched until the late twentieth century. This seems to argue, theoretically at least, for a 'maximalist' agenda for conflict resolution, that is, one that addresses all components of the conflict, including its structural roots.

Since one of the aims of this chapter is to discuss the relevance for family mediation of theory developed at the international level in conflict resolution, it is useful to trace the route whereby these debates entered the field of A.D.R. The key figure here is Burton, who 'introduced a new paradigm into international studies' (Miall et al. 1999:45). Dunn (1995) charted Burton's career from post-war diplomat, via his role as an active worker in conflicts at the international level, to that of an academic in the field of conflict resolution. Dunn argued that Burton made a significant break with international relations, and moved away from the prevailing power of consensus in the study of conflict. If we accept Burton's basic assumption of needs theory, that the satisfaction of basic needs are a fundamental human drive and that conflict arises when these needs are blocked, then plainly the settlement of non-material needs such as identity and recognition are not to be achieved by power bargaining. Dunn noted how widely Burton cast his theoretical net, drawing on sociology, social psychology, organisation theory, and drawing insights from the developing field of ADR and mediation, particularly in the fields of labour disputes. Burton was closely involved in the development of problem-solving workshops from the 1960s onwards. Miall et al called these 'one of the most sustained attempts to wed theory to practice ... to tackle the more intractable conflicts of the day' (1999:49). These workshops were important for the theoretical approaches that developed from them, and are associated with the Harvard

school and the distinctive approach of Fisher and Ury (1981). They used the language of 'win/win', 'problem solving', 'mutual gain', and the distinctions between 'position', 'interest' and 'need'. These models were fed back into ADR, and, as will be shown in the next chapter, entered its language and practice pervasively.

Peace

Peace researchers have had to ask themselves the question of how to define peace, and the conditions that sustain it. I am not here intending to explore the moral and spiritual bases that have inspired much of the work of peace workers in the twentieth century, notably Gandhi and the work of such religious groups as Quakers and Mennonites. At the very narrowest definition, peace may be defined as 'the absence of war', and this essentially negative definition has been dominant for centuries. Reference has already been made to Galtung's distinction between types of violence, and his distinction between positive and negative peace is introduced here. He defined negative peace as the absence of direct violence, and positive peace as one when structural and cultural violence are also absent. Galtung saw the range of peace research as reaching far beyond the enterprise of war prevention to encompass study of the conditions for peaceful relations between the dominant and the exploited, rulers and ruled, men and women, western and non-western cultures, humankind and nature (Miall et al. 1999:44). Curle (1971) adopted Galtung's theorisation of peace and violence. He distinguished between human relationships that were peaceful and unpeaceful, and those that were balanced and unbalanced. Conflict is present whenever 'an individual's potential development, mental or physical, is held back by the conditions of a relationship' (1971:259). By unbalanced relations Curle meant all those relations where one party has the power to impose conditions on the other, and where this

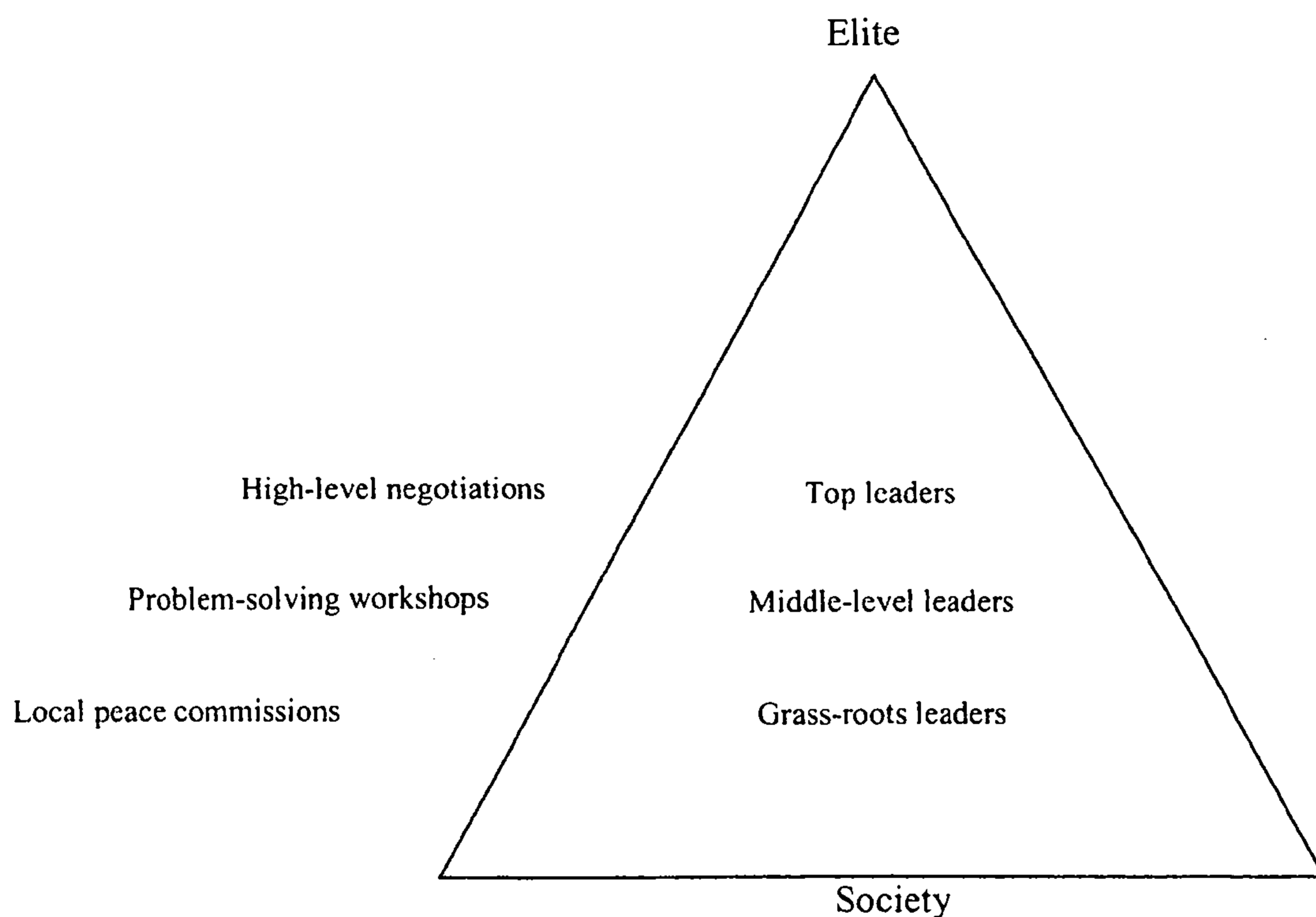
power is used to exploit. It is addressed by an increase in awareness which can lead to a 'revolution of the underdog' (1971:16). Curle saw the ultimate goal of peacemaking as the achievement of reconciliation, but accepted that, in the process, it may involve the intermediate goals of conflict resolution and the removal of injustices. Definitions of peace are thus shown to depend on definitions of the nature of the conflict and of the scope of the resolution agenda.

Conflict resolution and mediation

One method of resolving conflict peacefully has been through the process of mediation, and Curle has been a major thinker in defining its practice and principles. 'In the Middle' (1987) represented his way of systematising the practice of mediation. He saw the role of the third party as one of addressing misperceptions that do not allow the parties to see a way out of their conflict, and with the main role of clearing away obstacles to communication. Underlying this approach is a view of the roots of the conflict as lying in the subjective relationship, so that once mutual trust has been developed, then the issues can be addressed co-operatively. As his work and thinking developed, Curle (1995) moved away from the importance of interposing a third party between the parties to conflict, to the idea of working at the grass roots level to build peace. 'Since conflict resolution by outside bodies has so far proved ineffective, it is essential to consider the peacemaking potential of the conflicting communities themselves' (1994:96). Here he came close to the ideas of Lederach, whose contribution is considered later in this thesis, and who stressed the importance of training people to play a useful part in resolving conflict. The concept of empowerment was thus introduced to the field of conflict resolution. Lederach summarised it thus:

I am advocating a proactive shift that suggests a people's accumulated and implicit knowledge is an extraordinary resource for developing appropriate conflict strategies within their setting (1995:120).

Lederach's model, that took essentially a transformative view of conflict, defined the resolution of conflict as requiring intervention at many levels of society.



Source: Lederach 1997 (in Miall et al 1999)

When the findings of the research are analysed, this transformative model will be examined for its usefulness in application to a local and domestic setting.

The extent to which the practice of mediation at the international level has been reviewed and criticised is of particular relevance to family mediation. Mediation currently serves as the most common dispute resolution mechanism in ADR.

‘The rise of Alternative Dispute Resolution in the past fifteen years has highlighted the role that third parties play in a wide range of conflict arenas. Disputes that were once addressed solely through adjudication are, in many cases now addressed by alternative forms of third party intervention such as mediation’ (Folger and Jones 1994:35).

Mediation is defined as the intervention of a third party in the process of a conflict. It can be ‘pure mediation’, where the third party has no power to bring about or to enforce a resolution, or it may allow the third party to have powers of positive or negative enforcement, known as ‘mediation with muscle’ (Miall et al 1999:22).

Mediation at the international level has a long history (Mitchell and Webb 1998), becoming a recognised part of international relations, and embodied in the UN Charter’s call for agreed mechanisms for settling conflict. It is not the only type of third party intervention, others being ‘offering good offices’, or third party consultation, often in the form of problem-solving workshops. It was not until the early 1980s that a number of scholars began to address the critical issue of its effectiveness. Bercovitch et al (1991) noted that mediation appeared to offer an effective way of dealing with differences between antagonistic states, which is partly why scholars and policy makers have recently directed their attention to it. They defined mediation as:

A wide range of third party activity, provided such activity is acceptable to the adversaries, and purports to abate, settle or resolve an international dispute without resorting to force or invoking authoritative rules (1991a:3).

They then posed four central questions:

- Under what conditions is international mediation effective?
- How do different international actors mediate and with what effect?
- How does a mediator's power over, or proximity to the participants, affect the course and outcome of mediation?
- Under what conditions can different forms of mediation be initiated and different roles undertaken (1991a: 5)?

They began the process of evaluation by analysing the conditions that influence mediators' behaviour and the impact they have on outcomes. They named two prevailing approaches to researching the effectiveness of mediation, i.e. the 'ideographic' (a descriptive approach which assumes all cases of mediation are different, and therefore nothing useful can be said about types of mediation and dispute outcomes), and the 'normative' (which assumes that no dispute is intractable, and experienced mediators can overcome all obstacles). They argued that neither approach is satisfactory, and neither has stimulated empirical research. They proposed instead the 'contingency' approach, which regards the outcome of mediation as contingent on a number of variables. This approach allowed for the identification of the determinants of effective mediation and stimulated research.

Bercovitch et al analysed 79 international disputes of which 44 were mediated, and devised a series of contextual or process variables (e.g. types of regime, relative power of the conflicting parties, identity and character of the mediator) which they hypothesised would

affect the outcomes of mediation. They arrived at tentative conclusions about how the variables of dispute intensity, and mediator strategies, the rank and power of the mediator and the timing of mediation, related to mediation outcomes. They argued that future research should be based on a careful definition of these variables and their relationship to outcome.

Fisher and Keashly (1991) also developed the idea of the *contingency* approach to third party intervention, one which matches the type of intervention to the characteristics of the conflict in question. This is based on the assessment that social conflict involves a dynamic process in which subjective and objective elements interact over time, and that different interventions are appropriate at different stages of the conflict. This acknowledges that no one third -party method will be expected to deal with all or even most elements of a given conflict, but rather that the characteristics and stages of a conflict need to be identified to provide the cues for implementation of different strategies. Fisher and Keashly also introduced the idea of *complementarity* of approach. In this case, third-party consultation and mediation (i.e. settlement and resolution approaches) can be sequenced and controlled to intervene in the most effective manner to resolve destructive conflict. Their overall argument is that the relative impotence of third-party intervention in many international situations is partly due to the lack of matching and sequencing third party strategies, particularly the appropriateness of 'pure' and 'power' mediation at different stages (1994: 41)

These theories of contingency and complementarity are particularly relevant to theorising about appropriate intervention in divorce disputes. The data will show that these disputes vary in their history, intensity, power imbalance, and mutuality of

definition, so that a theoretical approach which allows for such complexity allows us to devise a differential approach, and gives us the tools to begin to assess effectiveness.

Kressel and Pruitt (1989), in applying a research perspective to mediation in divorce, suggested a series of useful questions for its critical evaluation which come close to those addressed at the international level:

- Under what conditions is mediation most effective?
- What do mediators do and with what effect?
- What is the impact of mediator power?
- How do mediators decide what to do?

Kressell and Pruitt evaluated the research into divorce mediation in 1989, and concluded that as yet mediation research shows no connection between mediator behaviour and coherent theories of conflict. They contrasted it with the field of, for example therapy where clearly defined, if contested theories of personality and family dynamics underpin the type of intervention, and facilitate evaluation of its effectiveness.

Critiques of Conflict Resolution.

This section is devoted to what Miall et al. described as ‘innovative constructive criticism’ (1999 :41) that is, to critiques which have developed in the 1990s and which have derived mainly from critical social theory. In Chapter 2 the extent to which these critiques have been acknowledged in family mediation will be explored.

The Culture Critique

Culture became a significant issue in conflict resolution in the 1980s, but other academic disciplines had already adopted the cultural perspective. Health and medicine, in particular, had faced the challenge of how different cultural groups manage the experience of illness, and how this affected their use of western medical models, with its own underlying assumptions. It is most understood in the academic field of anthropology, and especially legal anthropology, which proposes a variety of models which classify forms and processes of dispute resolution as they arise in different societies. Duffey argued that only very recently have we begun to understand how culture impacts on conflict resolution theory and practice (1998:13).

The theories of Avruch and Black (1986,1990,1991,1993) provided the impetus for this thesis, and for its methodology. They argued that

Cases ... are of great interest to conflict studies, for case studies are the raw material with which we work(1991b:33).

The examination of statements which people make during an event, or as they reconstruct it after it occurs, brings to light the assumptions about human nature and the presuppositions about person hood that people use to make sense of the social world and to act in it (1991b: 33).

They believed that cases are useful in sharpening the ways in which we understand the relationship between conflict resolution and culture, and that they 'force the analyst or interviewer to make explicit his or her own common sense assumptions about people and conflict' (1991b: 41). In addition, they offered a methodology for such case studies, or comparative ethnographies, which produce culturally-specific mappings of conflict and of

conflict resolution methods. They called these, 'ethno-centric theory' and 'ethno-centric practice', concepts which Duffey defined as 'an innovative theoretical perspective' (1998:17). This research provides an ethnographic study of conflict at a particular level of society and in a particular group, and aims to contribute to 'a small but growing body of research that focuses on conflict resolution from a cultural perspective' (Avruch and Black 1991b:35).

Avruch and Black (1986) countered Burton's attempt to develop a theoretical basis for conflict resolution that allowed it to operate across different human settings, irrespective of culture and class. This derived from the theory of universal human needs, and has been most strongly criticised by anthropologists. Avruch and Black set themselves the task of avoiding either

The assumption of invariance and universality when variation in fact exists, and the assumption of uniqueness ... when in fact commonalities exist (1991b: 22).

In defining 'culture' they noted that anthropologists have defined it in either 'materialist' terms (it serves the adaptation of the human group to its environment), or 'mentalist' terms (it serves the group's creation of meaning in the world). They pointed to an emerging synthesis that recognises that the achievement of meaning is important not only in the creation of a coherent inner world, but also in structuring the environment. Thus perception is structured socially so that, for example, rocks and trees may be perceived as animate in one society but inanimate in another. Internally, anger may be perceived as positive in one society and negative in another. Thus, 'shared common sense ... is always local' (1991b: 28). This definition of culture is very far from what they perceived to be common misconceptions of culture, which often pervade well-meaning attempts to 'engage' the

participation of ethnic groups. These are; that culture is a 'thing' that can act, rather than a property of human consciousness, so that individual behaviour is over-determined; that it is uniformly distributed across a group ('all Japanese avoid conflict'), so that there can be a standard method of conflict resolution; or that it is reducible to 'custom', or customary ways of behaving, so that the conflict analyst simply has to 'get to know the culture', rather like an elaborate system of etiquette. Avruch and Black called these 'impoverished' or 'shallow' views of culture (1991b:31).

They preferred to adopt an anthropological definition as 'a system of meaning and values shared by a community, thus informing its way of life, and enabling it to make sense of the world' (Cohen 1997:109), or 'a fundamental feature of human consciousness, a perception-shaping lens' (Avruch and Black 1993:132). They asked, in a conflict situation: How do people perceive the conflict? What meaning does it have for them? How do they expect themselves and others to behave? Such knowledge is often implicit, taken for granted and sub-conscious, and information about it comes from observation of human behaviour. Avruch and Black called this 'ethno conflict theory', and they suggested that, among the determinants, an important one is the psychological question of what it means to be a person in this group. In case studies on which this thesis is based, it emerged that in defining the self, the meaning attached by these particular ethnic groups to the family and the community was deeply different from that of the majority community. It demonstrated the usefulness of Avruch and Black's comment that 'a broken leg is a broken leg in Papua or Stockholm. The same cannot be said for a broken marriage. Marriages are not constituted by biology ... but by culture' (1991a: 4). They considered that the case study

would also produce what they call 'ethno praxis', the relevant local processes of conflict resolution. These are examined in detail in this thesis.

Avruch and Black used terms for describing the *context* in which the analysis of conflict takes place. These terms are not used identically by all scholars in the field but they are useful clarification, not least for analysing where this particular piece of research is located. They are: *cross cultural* contexts, where conflict analysis takes place in a single cultural tradition; *intercultural* contexts, which include two individuals or groups from different cultural contexts; and *transcultural* contexts in which processes are studied in a wide range of cultures. This research is located in both the cross-cultural and intercultural contexts. The study of the Pakistani Muslim community in Bradford is not of a culture existing in a mono-cultural environment, but of an intercultural one, where the majority society has significantly different culture and religion. Some of the participants are arguably from a different cultural environment within their own community since, although both are from the same community, one party may have been raised in England and the other in Pakistan, with a significant difference in expectations of behaviour.

Avruch and Black thus argued that culturally diverse ideas about conflict, and diverse methods of dealing with it, must be incorporated into the theorising about, and approaches to, conflict resolution. Other scholars and practitioners have contributed, from their studies of conflict situations outside the Euro/North American context to this debate, notably Lederach, Salem and Cohen.

Lederach (1995,1997) has developed ideas in the area of cross-cultural training in conflict resolution. In Chapter 5 these ideas are explored with particular relevance to a training programme delivered to Ismaili Muslims, and at this stage only his more general

approaches to the culture question are addressed. Drawing from his experiences as a mediator in Central America, he argued that there are three main assumptions that dominate main stream conflict resolution (1995:5). They are:

- That it is a universal process, provided it is delivered with sensitivity and appropriate adjustments for the cultural context in which it is employed.
- That culture is therefore an aspect of conflict resolution that can be reduced to technique, and that training aims at empowering the professional and increasing the competence of the already trained.
- That theories and models of conflict resolution are indiscriminately applied and have no concern for indigenous traditions and underlying values.

These observations led him to a serious critique of 'top down' conflict resolution approaches used by western diplomats and peace-makers in conflict situations around the world. He argued that building on the resources of grass-roots leaders is an essential part of conflict resolution and peace building, and that culture should be seen as a vast resource, not as a challenge to be overcome by techniques (1997).

Salem (1993, 1997) focused on an Arab perspective of Euro/North American theory and practice, and argued that its values and approaches are rooted in a particular period of western history, which has no resonance with other cultures, and indeed may seriously conflict with them. This analysis is of particular relevance to this research, since

the particular ethnic group that is studied, although not Arab, is nevertheless Muslim, with a past history of living with western colonialism, and tribal in its organisation.

Salem made the following tentative critiques of some hidden assumptions that lie behind Euro/North American approaches to conflict resolution, and compared them with parallel assumptions in the Arab world. He argued that the concept of 'peace' has positive cultural connotations in western society, especially in Christianity, which he sees as a continued and enduring part of its heritage. He quoted Fukuyama's (1992) argument that the West has achieved a state of relative freedom, of protection of human rights, of widespread standards of literacy and health care, and of reasonable patterns of wealth distribution. It therefore has no interest in struggle, and conflict is seen as overwhelmingly negative. For Arabs, the struggle itself may be valuable, and conflict in the context of Arab nationalism may be seen as an invigorating and progressive process. Salem argued that in the West, suffering, and especially physical suffering, are seen as a disruption of the states of pleasure and comfort which are highly valued. He contrasted this with the Arab and Islamic worlds, which, 'in the trough of decline and defeat'(1993:365), do not share the optimism and vitality of the west, and may see death and suffering as right and valuable. We do not have to look further back in our own history that the seventeenth century to see instances of individuals who made the same choices for religious reasons.

Salem placed western conflict resolution in the context of the scientific world view of the twentieth century which places a high valuation on

A neutral and objective view of the world which is profoundly at variance with a traditionally religious and moralistic world view (1993:365).

In particular, the adoption of 'situational ethics' (what can be 'right' in one situation can be 'not right' in another) is profoundly antipathetic to cultures in which there are strict codes of right and wrong, and where there is a belief in a 'truth' which can be established.

The collapse of the religious and moralistic world view was a painful process that the West took centuries to pass through; it cannot be assumed that other cultures are at the same stage of a religiosity and a-morality" (1993:365).

Salem may be in danger here of ignoring significant differences between Europe and North America in religious affiliation and moral world-view. Nevertheless this attempt to give significance to religion and morality in perceptions of conflict and its resolution, is relevant to the interpretation of the data in this research. Shah-Kazemi (2000) argued that religion is significantly unexplored in this area. In relation to conflict resolution in the domain of marriage and divorce, she maintained that it is particularly in such intimate areas that personal ethics and beliefs are most clearly revealed.

Salem summarised his general argument as 'raising worthwhile questions about the moral, psychological and cultural framework from which western conflict resolution departs' (1993:368). He indicated a number of areas within Arab political culture in which western assumptions relating to the theory and practice of conflict resolution do not apply.

Cohen (1991) examined diplomatic negotiations and the effect of cultural differences on the negotiations between the parties. He asked whether the negotiation process is one single universal paradigm with cross-cultural differences being only stylistic and superficial. He examined how cultural behaviour operates at each processual stage of negotiation, and draws out some of the views of the self and of society which lie behind this behaviour. In Chapter 2 it is demonstrated that this assumption of a universally

applicable processual process of negotiation, is fundamental to family mediation training and practice in England and Wales. Shah-Kazemi (2000) examined the negotiation model offered by Gulliver (1979), and evaluated the model 'with a view to laying the foundations for a synthetic model of the processual dynamics of negotiation in the light of an analysis of cultural factors' (2000:302). It is more useful to examine this model after the data has been analysed, but it is mentioned at this point to indicate the centrality of the negotiation process to family mediation, and therefore the relevance of Cohen's critique. Cohen argued that, in intercultural negotiations, interpretation of communications is determined by one's own frame of reference. 'For there to be real understanding, the parties must be able to draw on matching semantic assumptions' (1997:26). He does not say how this is to be achieved, however Broome's work on relational empathy is a helpful way of conceptualising the task for the third party.

Broome (1997) proposed the concept of relational empathy to provide a means of understanding how difference in interpersonal conflicts may be managed. Drawing on the extensive work on empathy in the counselling and psychotherapeutic literatures (Rogers 1975, and Truax and Mitchell 1971), he noted that the concept has received relatively little development in the field of conflict resolution. He argued that, when the subjective worlds of the disputants are significantly different, the task of the mediator is to go beyond attempting to understand the other as an objective entity. Rather it is to encourage a mutual effort to explore and negotiate alternative meanings for ideas and events, co-creating a shared reality that he called 'the third culture'.

Cohen drew on terms from the field of anthropology to analyse cultural differences in behaviour during negotiations. He used Hall's (1976) definitions of 'high context' (

traditional) and 'low context' (modern) cultures, and argued that the particular social, psychological and value patterns of these societies affect what happens in negotiation. He postulated that low context societies are in general distinguished by the following features:

- An individualistic ethos, with a strong emphasis on rights and duties defined by law, so that contract rather than custom defines the individuals legal obligations. Disputes are resolved by law rather than by group opinion or informal methods of dispute resolution, and adversarial methods are widely accepted.
- A high regard given to direct communication, to 'getting-to-the-point' conversations to avoid wasting time on social trivialities. Refutation is not seen as offensive. The history of the dispute is regarded as relatively unimportant, and the focus is on the future and overcoming resistance to change. In negotiation, 'a give and take model' is assumed, with reciprocal concessions leading to compromise, which is regarded as a neutral or even positive term.
- Great emphasis placed on the written word or contract when signing agreements, signing is evidence that the work is well done.
- The exclusion of feeling from the process. In the words of Fisher and Ury (1981:11), it is important to 'separate the person from the problem'.

Cohen contrasted high context or traditional societies and described them as characterised by:

- A communal ethos, which has different assumptions about the relationship between the individual and society. 'Face' and 'dishonour' are vital.

- Allusive communication as opposed to direct communication. Nuances, and non-verbal clues are very important, and group disapproval is a very powerful sanction. Directness is much disliked, and a veneer of courtesy is essential to preserve social harmony.

Cohen examined a case of US/Japanese negotiation as an example, and from it made generalisations about how traditional cultures behave in negotiation. He concluded that there is a difference in conceptions of time, between monochronic and polychronic. For traditional societies nature governs the way the day is organised, whereas in industrial societies it is the clock. Traditional cultures value the cultivation of personal ties above the achievement of goals, and assume that an optimal solution would be too big a price to pay if social attachments are ruined. The interpersonal side of the negotiations is therefore vitally important. Personal ties are used outside the session to ensure that stratagems are developed to head off the crisis, and to ensure that nothing surprising happens which could cause the participants to 'lose face'. The concept of compromise can be shameful in other cultures, and Salem noted that Arabs actually have no term for it.

Traditional societies are particularly sensitive to the importance of signs, symbols and ceremony. Behind the concrete negotiations lie issues of dignity, honour, pride, status and power. At the end of the negotiations Western cultures assume that a contract is decisive, but for traditional cultures agreements are often seen as the start of the relationship in which mutual obligations will be worked out as need arises.

The case studies on which Lederach, Salem and Cohen base their observations and theorising are all essentially intercultural conflicts. Their usefulness for the purpose of this thesis is that they alert the researcher to the ways in which verbal and non-verbal

communications are culturally determined, and how the message may not be accurately decoded by the hearer who does not share the same frame of reference.

Mediation and culture

Mediation is not only a product of late twentieth century culture. It has been a feature of many societies over many centuries, in particular institutionalised religions often have deeply rooted conflict regulating or resolving mechanisms. Irani (1998) described traditional approaches to conflict resolution in Arab-Islamic culture, some of which are based on the Koran. He noted the importance of private and unofficial processes, particularly *sulh* (settlement) and *musalaha* (reconciliation). These rituals derive from Islamic law, and

Stress the close link between the psychological and political dimensions of communal life through its recognition that injuries between individuals and groups will fester and expand if not acknowledged, repaired, forgiven and transcended (1998:25).

However, the assumptions underlying mediation in these societies may be different from those of Euro-North American cultures. Often they place strong emphasis on dealing with feelings of hurt and anger so that the web of relationships is repaired. The metaphor for mediation is one of 'untangling and mending a web' and the emphasis is on seeing the disputant as part of wider social networks rather than as a social isolate. Duffey (1998) explored in detail indigenous methods of resolving conflict in societies world-wide and noted the differences which distinguish them from those in the west.

Lederach (1991), based on his own experience of mediating conflicts in Central America, argued that there are five major assumptions inherent in western mediation which

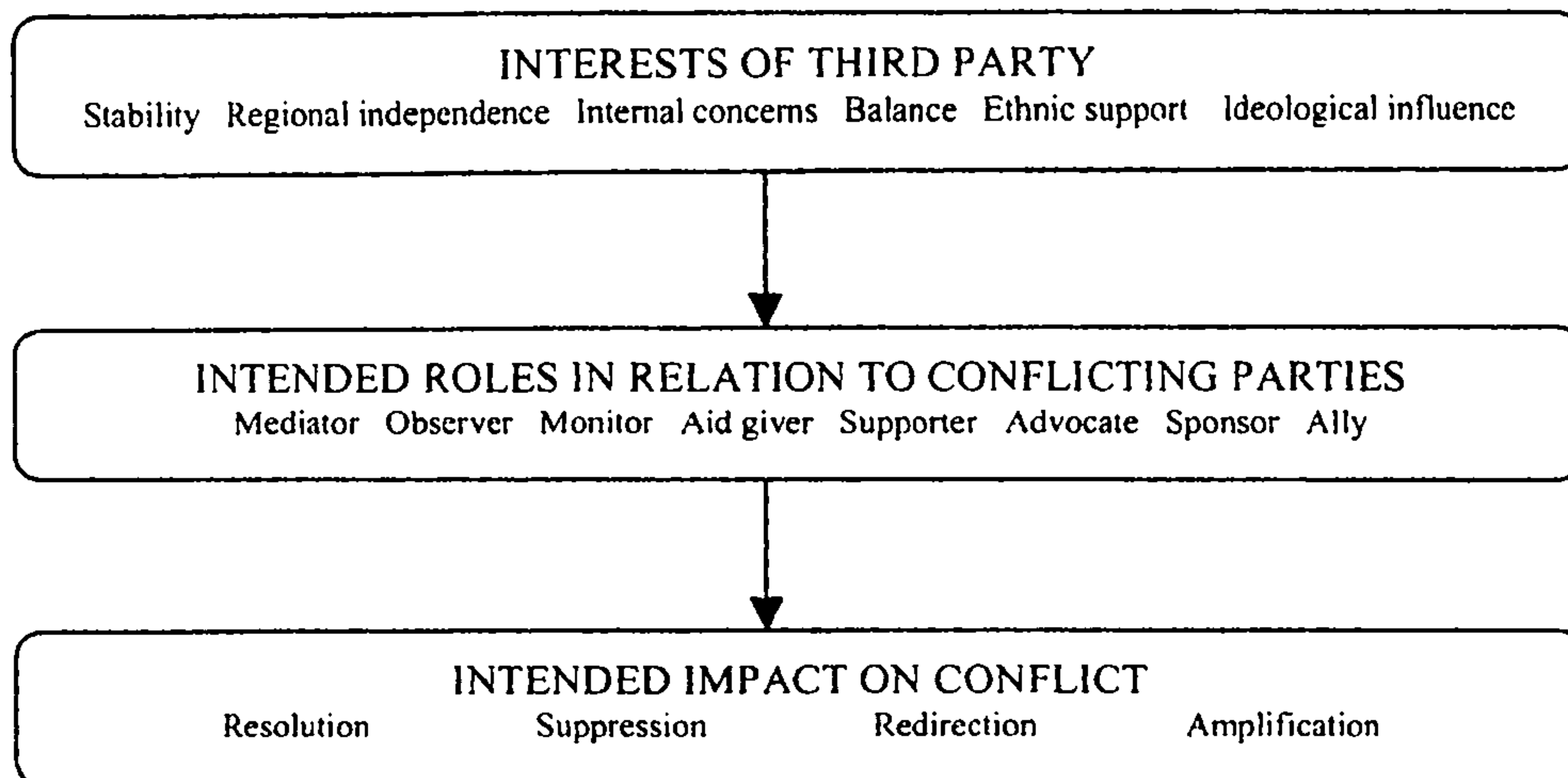
may not be embedded in other cultural frameworks: that it is *formal* process, with rules about when and where mediation may take place, and about behaviour appropriate to mediation; that it encourages *direct communication* between contestants as a way of resolving conflict; that it is based on a *monochronic temporal* organisation, and is analytical and rational rather than relational and emotional; that its goal is agreement on the issues, and it *assumes autonomy and individuation* in decision making; and that mediators are *professional, impartial, neutral and outside the process*. The differences that are of significance for this research are the amount of power, authority, or capacity for coercion allowed to the role of the mediator, and the involvement of wider networks beyond the disputing parties.

Encarnacion et al. (1990) argued that disputes, especially those involving ethnic groups, often lead to the involvement of other parties, significantly affecting the dynamics of the dispute. They proposed an alternative terminology for describing intervention in disputes, and introduce the general term 'concerned parties' to cover actors outside the conflict. They then suggested a model that allows us to conceptualise the range of third party relationships to a dispute. In this model, it is postulated that the further one is from the centre of the dispute, the lower will be one's interest and commitment. 'Core' parties are defined as the actual disputants, and 'concerned' parties are those with an interest in the dispute. Beyond these are those who, for the moment, are uninvolved. In deciding who is appropriately defined as a core party, a useful approach would be to ask if 'the party's agreement or acquiescence is needed in any settlement (1990:17). 'Concerned parties' can be considered on a gradient from actively influential to marginally influential, and from marginal involvement to active involvement.

The introduction of these general terms is useful in understanding conflict in terms of networks or of systems of dynamic relationships beyond the narrowly defined parties to the dispute.

Encarnacion et al (1990) also introduced the idea of the individual or organisation who may emerge during the dispute, who wishes to adopt the role of a concerned party, but whose links with one or other of the disputants make him or her unacceptable. These are called 'embedded third parties'. In analysing the nature of family conflicts during divorce, these terms provide useful and neutral terms to describe and understand the changing dynamics of the participants to the conflict beyond the defined parties. Encarnacion et al also considered the role of the mediator in the dispute, who may be the 'outsider neutral' defined by Lederach as an essential feature of western mediation, but who could also be 'insider partial'.

Source: Encarnacion et al (1990:47)



This model enables us to conceptualise, on the left, the role, interest and intended impact of the neutral mediator, and on the right, the third party who is an ally, with a range of roles in between. Encarnacion et al argued that we cannot always assume that a partisan mediator

will always lead to an escalation of the dispute. This model helps us to explore key questions that have arisen for mediators:

- What influences the way new parties become involved?
- How are they perceived by others?
- What allows them to carry out an effective mediating role?
- When is the most appropriate time to intervene?

Third parties often have an ill-defined role in relation to the conflict and are often misperceived. Encarnacion et al acknowledged the debate between those (e.g. Touval and Zartman (1985) who argued that the effectiveness of the mediator depends on authority, status, resources and power, and those (e.g. Yarrow (1978), who believed that it is the lack of coercive power of the mediator which is a key factor in effectiveness. They argued that the key factor for the mediator is credibility, and that his/her main area of responsibility is for procedural matters and not for the dispute or the issues. The important quality is the ability to be clear about the role and to articulate it. This model allows the definition of the role of the mediator to encompass a wide range of types of intervention; for the choice of a mediator according to his or her standing in the community, or position outside it; and for the use of incentives or punishments in mediation, depending on the nature of the conflict. It frees us from the notion that 'outsider neutral' must be superior. It offers to the parties the choice of a mediation process that can allow for penetration from outside the family, or it can offer the choice of excluding dominant parties so that it becomes a forum in which parties can demonstrate their independence and credibility.

From the data on which this research is based a form of dispute resolution is observed that offers only insider partial attempts as 'mediation', and where 'concerned parties' are

involved in the disputes in often unwelcome ways. The only alternative is the form of family mediation offered in UK family mediation services, that has the features of Lederach's 'prescriptive' model. Encarnacion et al's model offers terms and criteria for deciding who might need to be involved in the negotiation, what type of third party intervention would most respect the values of the parties, both in relation to their own culture and tradition, and in respect of changing perceptions of the values of those traditions.

The power critique

It is argued later that the data on which this research is based show how pervasively power and gender influence the conflict dynamic of the disputes, and the process and outcome of the conflict resolution process. It is argued that without an adequate theory of the discourses and structures through which relationships of unequal power are transmitted and maintained, intervention to bring about change may be partial or naïve. The following debates and theorisation of these structures in the field of international conflict resolution are explored for their relevance to the field of family mediation.

Miall et al see the 'power, participation and transformation' critique of conflict resolution, which developed at the 'interface between traditional conflict resolution and critical social theory' (1999:58) as the second area of constructive criticism in this field. Broadhead (1997) argued that peace studies in general have broadly failed to produce an integrated approach to normative issues in conflict resolution. How do we progress from a violent and unjust society to a peaceful one? This is a question that involves not only an empirical study of conflict and its causes, but also a normative one of how we transcend the social order. She argued that critical theory offers the way forward in conceptualising this

process and suggested that 'researchers can use insights from critical theory to gain a more nuanced understanding of the social processes which will not only provide the basis for understanding conflict-and therefore its resolution-but which will add the necessary insights to allow a transformative agenda' (1997:14/15).

Three critical theorists, Foucault, Habermas and Gramsci, provided a theoretical approach which illustrated the 'intrinsically symbiotic relationship between theoretical insights and practical outcomes' (Grussendorf 1997:15). An exhaustive discussion of the concept of power is not attempted here. The discussion is tailored to an exploration of power in conflict resolution. In attempting a summary of these three theorists, Fetherston's (1997) application of their theories to conflict resolution is drawn upon. Fetherston summarises Foucault's theories as follows.

First, that power is not held or exercised exclusively by states or other political or economic institutions as described in classical Marxist theory, but is rooted in a system of social networks. The state may exercise power, but can only operate this power 'in relation to a whole series of power networks that invest the body, sexuality, the family, kinship, knowledge, technology and so forth' (Fetherston 1997:32). The state depends on 'the practices of knowledge producing apparatuses such as schools, universities and churches' (1997:32). In a conflict situation we therefore have to understand what prepared the ground-work for that situation. What discourses, historical, religious or cultural, inform the definition of the conflict? In the field of conflict resolution, we ask not 'in what culture and history is this conflict rooted?' but 'how has conflict and history been defined, and norms accepted, and how does the conflict feed upon them?'

Secondly, she developed this concept of power into one which enables us to see the various participants in the conflict (including the third-party intervenors) as exercising not only power over and against one another, but also as operating through discourses which discipline and normalise that power. This power may relate to nationality, 'race', ethnicity, religion, and gender, and is constituted through that discourse. In a conflict situation, we have to understand how the participants perceive each other's power. This has value in understanding the role of the third-party intervenor, and the discourse of power on which his or her intervention is based. It enables us to begin to encompass issues of 'race' and racism, which are largely absent from the mediation literature.

Thirdly, she summarised Foucault's conceptualisation of the relation of knowledge to power. She particularly used this to reflect on the nature of theory and practice in international relations (p33ff), but the same application could be made to conflict resolution. The accepted classifications used in the field serve to constitute the terrain and to serve as a discipline on those acting upon it. The language of mediation uses terminology such as 'normalising', 'containing', 'reaching peaceful settlements', 'maintaining communication', in referring to family disputes. This may act as a constraint on the practice and theorising of mediation in contexts of threat, violence and serious inequalities of power, and may impoverish attempts to conceptualise radical re-definition of the process.

Power in Foucauldian theory is therefore constituted through a shifting network of alliances, rather than the possession of a person or a group. Layder (1997), argued that a weakness of Foucault's theory was that he tended to ignore the idea of the subject

independent of social construction, and that he did not sufficiently conceptualise the way that power operates differently in different domains, or areas of social life. Especially that he neglected the settings of the family and of personal relations, and that an individual can operate 'to make a difference'. The ability to 'make a difference' depends often on personal qualities and, importantly, on access to power resources. Layder's argument is useful for the analysis of the data in this research. In a patriarchal and traditional society, access to sources of power is different for men and for women, and this can influence face-to-face relationships. Nevertheless, individual power relationships between men and women are not always the mirror image of this, and each individual has his or her own capacity to challenge the exercise of power. Layder argued for a theory that allows for the transformative power of the individual.

Fetherston considered that the key contribution of Gramsci, as a Marxist analyst, is the concept of 'hegemony'. Gramsci suggested that in trying to understand the 'entrenchment of class rule by the bourgeoisie' (Fetherston 1997:34), the key is that power is deployed not through the power of the state, but by the variety of institutions and practices (including culture, religion and educational institutions) which manufacture the consent of the subordinate classes. This hegemony is maintained through solid economic roots. Gramsci rejected the economic determinism of Marxist theory, and tried to create a conceptual space for ideas and consciousness that work for social transformation, i.e. the idea of counter-hegemony. In terms of civil society, the aim is to build up consensus among sub-groups that are already critical of existing conditions. This concept will be useful in theorising how, in conflict resolution at the domestic level, the process could be

conceptualised to include the acknowledgment and sustenance of discourses counter to those of a patriarchal society.

Layder (1997) considered that Habermas has developed the theory most open to conceptualising power as constituted by both individual action and by system, since he acknowledged the psychological dimensions of human behaviour. Fetherston also argued that his work 'provides a valuable conceptual starting point in the search for an alternative approach to conflict management' (1997:41). In particular she examined his concept of 'communicative action' as opposed to 'strategic action'.

Interactions, woven into the network of everyday communicative practice, form the medium through which culture, society and personality are reproduced (1997:41). This is how children are socialised, and how social groups are integrated and secured by argument and not by force.

Fetherston believed that Habermas' theory has three important implications for the study of conflict. Firstly, it means that researchers have to take into account the vitality of networks within the community in question. How far are they open? How far do some groups have restricted access to debate? How far can and do communities take up the nature of their own circumstances in discourse, i.e. reflect critically on the conditions that have led to the present condition? The data in this research show not only individuals describing the exercise of power in their own lives, but also the existence of networks which have different degrees of openness and vitality. Some were the objects of attempts at control, and some were formed to allow hitherto unheard voices to be heard. Both researchers and mediators have the choice of ignoring, or of stimulating and empowering these counter discourses.

Secondly, it allows peacekeeping, or other interventions, to be evaluated in terms of the impact on the openness and scope of community networks. Does the activity incorporate the empowerment of local populations, and the ability of the local population to influence its own affairs? This conception of the scope of conflict resolution's activity draws on a theory of empowerment close to that of Lederach.

Finally, it implies that conflict transformation involves the repair of community networks. This may involve new participants and the hearing of claims and voices previously marginalised. It is here that 'a counter-hegemonic project grounded in communicative action can be realised through ... social movements' (1997:45).

These concepts of power locate conflict resolution in a transformative model, and the next chapter examines how far definitions of the role of family mediation in England allow it to encompass such a definition.

Fetherston located the ideas of Gramsci and Foucault in the works of two scholars who 'reflect on the issues of discourse and hegemony while directly engaging conflict and conflict management in both theory and practice' (1997:38). Jabri (1996) argued that militarism, both as a value system and as an order, is deeply embedded in society, and is maintained by discourses that make violence and conflict understandable. Conflict management theory and practice, in so far as they leave these discursive and institutional frameworks unchallenged, are part of the process that legitimates war. Nordstrom (1995) approached the same issue from an anthropological perspective and asked, 'how are military paradigms of thought and action translated from military and political leaders to the ground forces?' (1995:94). She argued that it is in grappling with the issue of power in this context that we start to recognise it not as a totalising phenomenon, but 'emerging from

complex social relations and cultural potentialities, negotiated, challenged, subverted and renegotiated over space and time' (1995:94). She believed that we have to challenge assumptions concerning what the conflict is about: 'often the power relations and culture seem so fundamental that they seem to be natural' (1995:110).

These approaches to the concept of power contribute not only to the understanding of conflict, but also to a richer and more theoretically grounded approach to methods of transformation. To paraphrase Beckett (1997:8), they help us to move from a narrow focus on practice, alleviated only infrequently by an uncritical and unsophisticated use of theory, to one that increases the power of the discourse of conflict resolution in terms of both academic credibility and practical effect (1997:80).

The gender critique

Does gender affect and indeed permeate conflict dynamics? The question is posed whether there is a 'gender lens', comparable to Lederach's 'culture lens' (1995), through which we can explore the conflict resolution process. What relevant theory is there in the field of gender and conflict resolution, and is it relevant to the field of domestic mediation? If the contribution of critical theory is to make possible the move from 'where we are' to 'where we want to be', what norms are implicit in the transformative agenda? What values inform the critiques of the structures in society which contribute to, and sustain the conflict? Does respect for local traditions, of conflict definition and conflict resolution, run the risk of ignoring the extent to which unequal gender role definition underlie some conflicts? This research yields data that demonstrate how power is exerted in a gendered way to affect the outcome of the disputes.

This section begins with a definition of gender. It is important to distinguish gender from sex. Broadly, feminist theorists have resisted the idea that men and women act in certain ways because of their biological sex, or that certain traits are innately 'male' or 'female'. 'Gender refers to the social meaning of being a man or a woman' (Douglas 2000:29), and 'if masculinity and femininity are socially constructed, they are also constructed in relation to each other' (ibid). Feminists argue that there is in society an overriding gender expectation, and that through socialisation women and men learn to conform to roles they are expected to occupy. Gender is thus socially constructed, and refers to those characteristics so constructed.

There is the danger that investigating gender issues in conflict resolution runs the risk of reinforcing bias and prejudice. Stamato (1992), argued that just as the 'race factor' can come to mean 'understanding Blacks', as if whites had no race, so the gender issue can become a 'woman problem'. I hope to demonstrate that in mediation, gender issues are as important for men as for women, since 'ultimately we should want forums in which the full expression of how a conflict is seen, felt and understood, becomes part of the process for managing and maintaining it' (Stamato 1992: 381).

It is useful at this point to attempt a brief summary of some of the key ideas of feminist theory, since some of the concepts have been used in this section, but without explanation. One important idea is that society is based on a culture of *patriarchy*, a concept that is particularly developed in radical feminist theory. The essence of this theory is that 'in all societies and in all cultures men dominate the public world, and through this domination control and define the behaviour of women' (Douglas (2000:25). The power of patriarchy is seen as 'highly differentiated, but the point is that all women are potentially

vulnerable to a system of thought that is not always evident' (2000:88). The overarching concept of patriarchy has been interpreted differently by different feminist perspectives, especially in relation to other societal influences such as class and race, and to how it might change.

A pivotal place is given in feminist theory to the relationship between gender and power. A synthesis of feminist and post-modern thinking, with its interpretation of social life as a series of overlapping discourses, made sense to many feminists in that it allowed for difference in gender and sexual identity, and gave theoretical space for the many-faceted lives of women. The theorisation of power in post-modernism addresses the exercise of power at every level and in every domain, both public and private, thus including power in an analysis of gender and allowing us to see how gender is constructed through the practices of power. This conceptual relationship of power and gender is one of the central issues in this research. The cultural group that is the subject of this research originates from, and has continuing close ties with, a traditional and patriarchal society. We would expect that the religious and cultural assumptions would contribute to a perception of individual male and female behaviour as predicted by biological sex, and of women as exercising less power than men.

Another key concept is that of the dichotomy between the public and private spheres in which men and women operate. The public sphere, traditionally dominated by men, is regulated and socially acknowledged. By contrast, the private sphere, where women traditionally live, is historically unregulated and unnoticed. This research is located in a private domain, which is almost hidden from view. The conflict resolution processes that were described in this research were conducted in this private sphere, until the dispute

reached the public domain of the law. In the analysis of the data 'gender as an analytical category' will be drawn upon in addition to a theorisation of power, to understand the processes of conflict resolution in this ethnic group.

Reimann concluded that conflict resolution is ripe for gender analysis and that gender is an important entry point for understanding the internal dynamics of conflict.

To ignore "gender" as both constituting, and being constituted by, conflict in general and conflict management in particular is to ... leave unexamined existing power structures and hence remains caught in the logic and practices of conflict *management*" (1998:18).

Reimann (1999, 2001a, 2001b) argued that in conflict resolution 'sophisticated gender specific or gender-related in-depth analysis of conflict management is still strikingly missing' (1999:2). She acknowledged that in the 1990s peace building organisations such as the UN and EU started to produce reports on the position of women in violent conflicts, and that academic research focussed on the impact of conflict on women. (2001b:1). But she considered that this focus on the active roles of women in conflict often obscured the complex nature and dynamics of gender, and that there is a significant gap in analysis of the impact of gender relations on conflict and conflict resolution. This is true both of the study area and of professional practice. She advanced several reasons for this (2001a: 35) and argued that there is lack of an all inclusive gender-sensitive tool. She offered 'gender as an analytical category' as such a tool.

Building on the definition of gender already given, she defined gender in terms of:

- The individual gender identity (social norms and the socially constructed identity). How a man or woman defines him or her self in the society in which s/he lives.

- The symbolism of gender (classification of stereotypes). How masculinity or femininity is defined in a particular society.
- The structure of gender (the organisation and institutionalisation of social action in the public and private sphere, e.g. the distribution of labour).

All three categories are closely connected, and change in one sphere can lead to change in another. For example, women entering male-dominated jobs (gender structure), may lead to alteration of stereotypical notions of masculinity and femininity (gender symbolism), which may in the long term translate into a changed sense of what it is to be a man or a woman (individual gender identity). It is a category that provides space for theorising about variations of gender across class, culture and time. Reimann (2001a) then analysed a conflict situation using this three-fold dimension.

- We ask how men and women see themselves in conflict resolution activities. What ideas about men and women inform these activities? We are asking questions about identity and its social construction in resolution theory and practice.
- We ask whether it is possible for men and women to discuss gendered roles in conflict resolution activities. Are they able to reject and challenge them? We are theorising here about social change and historical variability.
- We look at the distribution of labour in the 'invisible' private sphere as well as in the public sphere, and ask what power structures are visible, or hidden in conflict resolution. We are theorising here about power structures and 'taken for granted' power distribution.

The narratives of men and women in the research data show how the indigenous conflict resolution process was pervaded by gendered views of how men and women behave, and

by power structures that were far from gender-neutral. They also show men and women challenging these views, and thus demonstrating the possibility of historical change. It raises some crucial questions for mediators, which connect with the transformative agenda to which critical theory has contributed. What are the costs for the mediator and for the parties in supporting or not supporting social change?

Reimann argued that this analytical tool allows us the space in which to discuss, and theorise about identity and its social construction, about social change and about power structures and power distribution.

Gender as an analytical category has the potential to generate closer-knit linkages between different levels of analysis and different categories of actors ... and to address essential linkages between the micro level (the individual) and the macro level (the organisation of social action in the private and public sphere) (2001b :8).

The empirical research on gender in the field of conflict resolution can be categorised into two main strands. The first analysed the ways in which men and women handle conflict (Stamato1992), how women behave in negotiations and perceive their power (Watson 1991, Northrup 1991), and how men and women's behaviour in negotiation is affected by their ways of perceiving the world (Kolb and Coolidge 1998). The second strand comes from analysis of the third-party role, of gender differences in mediator styles (Grillo 1991), and of perceptions of the effectiveness of mediators according to gender. The second perspective is examined later in the chapter on family mediation.

From the perspective of how women behave in conflict situations, a study by El Bushra (1998) is of particular relevance to this research. It showed how a gender-aware

analysis might be applied to a particular conflict. She described a conflict transformation process in Africa and, in particular looked at the dissonance of language of gender studies and the language of men and women in these communities. She argued that the gender critique that arose from experiences in the Development field has focussed too much on women's economic roles and has not developed a holistic model that responds to the experience of men and women at the grassroots. She conceived of conflict as a process, moving to a variety of outcomes. At any stage of this process, participants can see themselves as 'agents' within the conflict, with a range of opportunities and choices open to them. However, this range of choices is essentially gendered.

This seems a useful way of conceptualising the conflict, since it contains a 'window of opportunity' for marginalised or powerless groups to exert influence, but also allows one to conceptualise that the opportunities and limitations are different for men and for women. El Bushra introduced two concepts which she considered help us to analyse conflict and gender in a way which takes into account the standpoint of those involved in the conflict. They are: 'identity', (the social process whereby individuals identify themselves with particular roles and relationships), and 'agency' (the strategies used by individuals to create a viable and satisfactory life in the context of these relationships). An example from the field in which she demonstrated the use of these concepts has particular resonance for this thesis. As a result of her study of peace building in the aftermath of violent conflicts in three parts of Africa, she concluded that the goal at which women characteristically aimed was 'respect', both for its own sake and for its implicit sanctioning of the relationship of marriage. This was essential for their survival. For the women, acceptance of a prevailing ideology is the condition of their survival and, in following it, they can justly claim

protection and support from family and community. In seeking autonomy they may forgo this support. Their priorities and values are different from those of researchers.

Exploitation is a price they are willing to pay for the public acknowledgement that they make important contributions to society, and for the removal of doubt about their relationships (El Bushra 1998:83).

Gender analysis in conflict therefore 'must pay greater attention to these personal dimensions of gender analysis, examining terms such as 'self esteem', 'identity' and 'respect' (1998:83) and at the same time conflict analysis should accept that the 'propensity for uncontrolled conflict in individuals and communities is rooted in societies that are not gender neutral' (1998:4). This analysis takes us a long way from a theory that sees the participants as having gender neutral-perceptions both of the conflict, and of their understanding of its generation, and of what is a good outcome for them. Reimann concluded that these ideas, carried further, suggest that an engendering of the process of conflict resolution is not a 'sweetness and light' process.

Rather it must be considered as part of a rather complex and long term process of negotiated social change, which involves the personal, material and political/structural levels of social life, and is inherently conflictive (1999:17).

Conclusion

In this chapter an attempt has been made to analyse the concepts and theories of conflict, of peace and of conflict resolution, which have developed from the study of conflict at the international level, and to begin the process of assessing their relevance to conflict at the interpersonal level. The assumption is that findings about conflict at one level enable us to

develop insight into conflict at another level. Mitchell (1981) visualised this as a ladder, with a transfer of insights or theories occurring between the different domains.

The various domains are summarised as follows.

Interstate
Intercommunal
Industrial
Interorganisational
Intra-organisational
Inter-group
Inter-personal

(Mitchell 1981 Figure 1:1)

Galtung (1985) stated that peace research is mainly concerned with international relations and is seen as relevant to relationships between large groupings, such as class, race or ethnic relations, but that a line is drawn at the interpersonal or intra-personal levels, and these are seen as marginal. The overview conducted in this chapter suggests that there has been some transfer of insight and theory from the industrial and inter-communal levels to the international, via Burton and the Problem-Solving School, and then to the interpersonal level. However, as a broad generalisation the interpersonal level has not been enriched by the debates and theorisation that have developed at the international level in the last two decades. In the next chapter, the theoretical basis of family mediation is examined in the light of this observation, and the weaknesses in theoretical development are noted throughout. The data are then examined using these theories and the model of conflict resolution at this level is re-conceptualised.

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CHAPTER TWO.

Family Mediation: its origins and development in England and Wales

Introduction

This chapter analyses the theory and practice of mediation in divorce disputes as it developed in England and Wales[□] at the end of the twentieth century. It examines the way in which changes in family structure and family law provide the context for the development of family mediation. It discusses key debates within sociological theory that try to explain these changes. It places family mediation in the context of the Alternative Dispute Resolution (ADR) movement, and shows how its distinctive closeness with the legal profession has affected its development. It also examines the particular organisational structure of family mediation, and argues that the constraints of this structure have had a significant impact on the development of theory and practice of family mediation.

Overview of the development of family mediation in England and Wales.

Family mediation should be seen in the context of ADR that developed in the US in the 1970s. Acland (1995) listed four processes that are encompassed in a definition of ADR. They are: consensus building, joint fact-finding, independent expert appraisal and mediation. Mediation currently serves as the most common dispute resolution mechanism in the ADR programme (Acland 1995:2). Davis and Roberts (1988) noted that, in the UK, extra-legal dispute resolution has a history dating back to the late nineteenth century, almost entirely in the field of industrial relations. Murch (1980) described the key role

played by the Probation Service in the development of 'participative justice', that is, an extra-legal, settlement-seeking approach to separating families. He looked back to the long-standing role of probation officers in magistrates' courts, where they sifted through the applications for separation and divorce, and attempted out-of-court settlements. He traced, through the 1950s and 1960s, a growing tendency of divorce court welfare officers to embrace what was then called 'conciliation', as a way of embracing the active role of the parent in divorce.

Thus the development of family mediation, which began in Britain in the 1980s, was not rootless or totally innovative. It developed alongside parallel activities of other professionals, particularly in the law. However, from being the exception rather than the rule, ADR and mediation have now become part of institutions which work with a range of disputes in families, schools, communities, between victims and offenders, in commerce, and in the health and environment agencies. 'Mediation has moved from the margins to the mainstream and is paid for in some situations by public funds' (Liebmann 2000:34).

What are the reasons behind this rapid growth? There are straight-forward ways of analysing the structures and social changes which contributed to this growth, but the more significant questions are about 'the strong divergence of opinion of how we understand that growth and how to characterise the mediation movement itself' (Bush and Folger 1994:15). Irving and Benjamin (1995) saw the mediation movement as arising at a point of confluence of trends in US society in the 1960s and 70s. One was the avalanche of divorces which was overwhelming available judicial resources. There was therefore a search for ways to reduce the crushing burden on the courts, and the costs, both financial and personal, to the litigants and to the state. Another trend was the increasing concern for

[□] Scotland and Northern Ireland have separate legal systems.

individual rights and freedom, so that people were unwilling to accommodate 'existing institutions and their anonymous procedures' (Irving and Benjamin 1995:2). Part of this was the growing dissatisfaction with the legal system, and its reliance on the adversarial model for solving disputes. Acland (1995) offered a polarised view of the relationship of the law and ADR. He characterised the law as adversarial, defining situations only within legal terminology, using legal language that serves only to obscure communication, and as conducted by professionals trained only in the law and in legal procedures. By contrast, ADR was seen as non-adversarial, consumer-led, using everyday language, and with practices grounded in negotiation and mediation, with an understanding of human psychology (Acland 1995:25ff.). The research which has undermined this simplistic approach will be explored later, but this characterisation demonstrates the way that ADR has defined itself in relation to the legal profession.

Bush and Folger (1994) write as academics critical of ADR and of the way it has developed in the USA. They characterised mediation practice, and its literature, as revealing different 'stories' which stress different dimensions of the mediation process and its societal impact. They argued that these four divergent stories imply that the mediation movement is not monolithic but pluralistic and, more importantly, that they reveal underlying and different goals, each with its own value base. These 'stories' provide a useful conceptualisation with which to develop critiques of mediation as it has developed in the UK. None of these is the 'true' story of mediation, rather each is an account of different practices. They are alternatives, one to another.

The Satisfaction Story sees the mediation process as a powerful tool in satisfying human needs. Because of its flexibility and informality, mediation can open up the full dimensions

of the problem and can facilitate collaborative and integrative problem solving, rather than adversarial, distributive bargaining. It thus produces win/win situations. Furthermore, it reduces the economic and social costs of the dispute and produces both public and private savings. Bush and Folger named the Harvard School, and Fisher and Ury (1987), as the academics and practitioners who have been influential in this strand of mediation. It links one theory of conflict within ADR with the thinking of Burton and the problem-solving approach that has been previously discussed.

Bush and Folger argued of the *Social Justice Story*, that while the numbers of its adherents are few, this story has been consistently told from the earliest stages of the movement. They referred to key authors Wahrhaftig (1992) and Shonholtz (1987), who were practitioners in the tradition of grass-roots community building. Mediation, in this story, is a tool for building communities. It helps neighbours to see that behind their individual disputes may be mutual enemies and common interests. This 'story' theorises the structural issues that may lie behind disputes, and establishes the normative ground on which they might be addressed.

The Transformation Story was used by Folger and Bush to describe a form of mediation that is essentially facilitative and non-directive. They explained the two key elements as empowerment and recognition. Empowerment encourages self-determination and autonomy, increasing the capacity to view situations clearly and to reach joint decisions. Recognition involves participants becoming more aware of, and responsive to, each other's feelings. The distinctive element in this approach is that the mediator's practice should be consistent with these principles, without directive pressure, and giving parties the power to define and solve problems on their own terms. Transformative

mediation as defined in this context has to be distinguished from the concept of *conflict transformation*, which was discussed earlier, and which addresses structural and normative aspects of conflict.

The Oppression Story is essentially critical of mediation. It sees mediation as a possible tool for the strong to use against the weak, arguing that the process contains inadequate checks on power imbalances both between the parties and between the parties and the mediator. It also criticises mediation as focussing exclusively on isolated instances of conflict, thus defusing the impetus for social change.

Bush and Folger examined current mediation practice in the USA, and attempted to characterise it using these concepts. They argued that mediation in the USA has become dominated by the satisfaction story, with an outcome-based perspective, so that the potential for transformation has been lost. They argued that the satisfaction story can lead to an increased acceptance of the right of the mediator to 'judge' what the best solution is, and that interventions may produce solutions which do not truly reflect the parties' needs. The satisfaction story comes close to what was earlier defined as the traditional elements of conflict resolution, which by mediation and negotiation aim at changed attitudes, changed relationships and a new power balance (Miall et al. 1999:17). The limitation of this model is that it has no inherent theorisation about issues of culture, gender or structural power imbalances. This is a significant example of an area in which the theories discussed in Chapter 1 have failed to penetrate the field of family mediation.

Scimecca (1993) also developed a critique of ADR as practised in the USA, and argued that there has been little if any theory development in this field. In general, ADR is what he calls 'theory light'. He criticised ADR as:

- Characterised by an over-emphasis on process, unsupported by articulated insights into the generic nature of disputes. It concentrated on 'how to settle disputes' without regard to power disparities.
- Embedded in individualism and failing to address adequately structural issues.
- Concentrating on particular disputes that do not involve violence or the defiance of social norms, e.g. matrimonial or community disputes. (The research on domestic violence challenges this characterisation of family disputes.) It ignores disputes based on values and power.
- Committed to the concept of the neutrality of the third party, which may serve to consolidate differences between unequal parties.
- Having lost sight of its concern for the poor, by ignoring issues of power and empowerment, and instead becoming a source of new jobs for professionals.
- Lacking any organic connection to communities despite the fact that it began as a means of offering access to justice for powerless communities and individuals.

Pervasive in these criticisms is that of the underdeveloped conceptualisation of power. Reid and Yanarella (1976) had earlier criticised American peace researchers for failing to incorporate into their thinking the works of critical social theorists, especially those such as Gramsci, who argue from Marxist base. Twenty years on, Scimecca offered Weber's theory of power as a useful one that would enable us to address the criticisms he has outlined. It has already been argued that critical theory offers both a theorisation of power and of normative change, which would more effectively address these criticisms, and allows us to develop a more grounded and comprehensive 'story' of mediation. This will be developed further after the data has been analysed.

The development of family mediation in the UK

It is useful to analyse this development using Bush and Folgers' characterisation as a way of shaping the discussion. Comparisons will also be made between the development of family mediation and the parallel growth of community mediation, since there are telling points of divergence and convergence.

Liebmann (1998) described the impetus given to mediation by the arrival, in the 1980s, of academics and leaders in mediation from the US and Australia. Their meetings with a variety of audiences brought together those in the UK who were pursuing mediation in the neighbourhood context, and between victims and offenders in the criminal justice system. This led to a rapid growth in victim/ offender schemes, victim support schemes, and local community mediation projects. Liebmann identified two strands of thinking which informed the community mediation movement. One is the grass-roots self-help schemes, intended to help people sort out their own problems rather than resort to the law, and the other 'agency-led', by organisations trying to find a way out of the cost and ineffectiveness of legal solutions to neighbourhood and community disputes (Liebmann 1998: 24). When the national organisation, Mediation UK (formerly FIRM) was set up, one of its aims was 'to bring conflict resolution skills to every individual as part of his or her basic education for citizenship in democracy' (1998:25). Beckett (1998), applying Bush and Folgers' perspective to community mediation, considered that in significant ways it has developed differently from in the USA, and that in ethos it has incorporated elements from both the 'satisfaction story' and the 'transformation story' and, arguably, from the 'social justice' and 'oppression stories' too. He considered that the

transformation story is also a very important strand in mediation in the UK, with community mediation services especially interested in the potential for transforming individuals and their relationships, rather than simply on providing a settlement. He attributed this to the fact that many mediators have traditionally been concerned with interpersonal relations, social change, and progressive activism, and to the influence of Quakers in the funding and organisation of the early schemes.

Family mediation, by contrast, has its roots in the professional domain of the law and of family policy. In 1974 the Finer Report examined the growing number of one-parent families, and proposed a family court, with a conciliation service attached, to tackle the issues arising from separation and divorce, notably children finance and property. As the government failed to act on these recommendations, voluntary initiatives developed to address the same problems. There followed a number of such initiatives, some, as in Bromley and Surrey, instigated by court welfare officers setting up teams of volunteer conciliators as a supplement to writing reports. A national body, then called the National Family Conciliation Council, (NFCC) was set up in 1981, covering some 20 local services. From the beginning there were features distinctive to family mediation, which marked it as different from community mediation.

Mediation and the legal profession

Mediation focusses on an area of dispute already dominated by the legal profession. It therefore had to show how its practice differed from, and was preferable to, the law and the work of court welfare officers. Much of the early research into the practice and delivery of mediation in the UK is therefore focussed on: whether it was more effective and less costly than lawyers (Ogus, Walker et al. 1989); on consumer satisfaction (McCarthy and

Walker 1996), and on how it differed from in court services (Davis and Roberts 1998, James and Hay 1993). One of the main arguments for family mediation is that it is more effective than the adversarial legal process, both in personal and financial cost, and that it can provide a saving in court time. This led to a characterisation of the law and of the legal process which has attracted criticism. Davis (1988) observed that, during the process of divorce disputes, there is a strong settlement orientation at every stage of the legal process, so that very few cases come to a full court hearing. Contrary to preconceptions, clients express themselves satisfied with their solicitor's handling of their cases. A recent series of articles in *Family Law* (Davis and Pearce 1999) showed the continued and rising preference by parents for the settlement of child custody disputes in court. Solicitors see themselves as negotiating on behalf of their clients, but with a strong bias to considering the needs of the children and the long-term relationship of their clients. Davis argued that the pertinent criticisms that courts and adjudicators should be more accessible, and children's rights more effectively addressed, could be met by a reformed court system, rather than by moving the dispute into the private domain of mediation.

Mediation and the voluntary sector

It is a striking feature of the organisational structure of family mediation services during the 1980s and 1990s that, while they struggled to differentiate themselves from the legal process, services had to acknowledge that local judges, solicitors and magistrates exercised a decisive influence over referrals to the service. The voluntary management committees that ran the local services were often dominated by local lawyers, frequently chaired by a judge, and often with local probation funding (Fisher 1992). The implications of this for local services were that their development was marked by some of the inherent

disadvantages of volunteer management. They tended to be unrepresentative of all levels of society, their members may arguably have had the implicit agenda of preserving 'special interest', and often they had poor financial and management skills. There is experience in voluntary agencies generally that funders often exert considerable influence on the definition of the agency task. It can be argued that the essentially conservative and unrepresentative nature of these management committees influenced the definition of mediation as delivered in the local services. In the late 1980s, while manager of a local service, I carried out a survey on the extent of ethnic minority representation on local management committees in NFM services. This showed that only three out of some fifty services had such representation; there was none at all on the national committee. This particular organisational structure may have made it harder for family mediation to embrace the social justice and transformative perspectives in mediation. Later developments since the 1996 Family Law Act have confirmed the trend towards a settlement orientation at the cost of other perspectives.

Mediation and the counselling professions

Despite operating in a legal context, and despite the pervasive influence of lawyers at local and national levels, the practitioners themselves were drawn initially almost entirely from the social work and counselling professions. Until the early 1990s such qualifications were necessary before prospective mediators applied for training. Beckett (1998) argued that such mediators would be more concerned, and more comfortable, with issues of interpersonal relations, personal growth and empowerment. One effect of this was that a debate developed within family mediation about how far the principles and practice of social work, counselling and

family therapy could be incorporated into a definition of divorce mediation. Family mediation therefore had to define itself against another established professional discipline, while yet drawing on theories of attachment, loss, marital interaction, grief processes, and child and adult development (Parkinson 1986). This debate is still alive in family mediation and is best summarised by Parkinson.

She outlined three models of mediation: settlement-orientated mediation, transformative mediation and therapeutic mediation (1997: 82-85). The last model she characterised as a process delivered by

Mediators who are more concerned with relationships and communication than with the fine details of financial settlements, and who often use techniques derived from family therapy, though the mediation context and the mediator's role change the way the techniques are applied (1997:84).

This is clearly contrasted with a model offered by S. Roberts (1988). He identified, out of the diversity of practice in Britain at the time, three 'ideal types' of mediation. One is 'minimal intervention' where the parties are judged competent to mediate; the second is 'directive intervention' which combines advice with joint decision-making; and the third is 'therapeutic intervention' which takes into account family relationships, and assumes that the presenting problem is a symbol of the underlying one. After discussing the problems associated with each model, he argued for the minimal form.

M. Roberts argued that 'the assumptions, objectives and methods of these two modes of intervention [i.e. minimal as against therapeutic] are incompatible'' (1997:16). Her definition of mediation summarised the main objectives as being: to restore contact between the parties, to provide a safe and neutral forum, to provide an impartial presence,

to facilitate the exchange of information, and to help parties examine their common interests and objectives (1997:7). These different approaches indicate the tensions and debates that underlie mediation practice in the UK.

Mediation and the welfare debate

Another distinguishing theme is that family mediation has developed in the context of increasing divorce rates, and a perception of children suffering as a result not just of separated parents but of legal processes which failed to address the particular needs of children. James (1992) argued that a main plank in the development of family mediation has been the theme of 'children in danger'. Drawing on research in the USA (Wallerstein and Kelly 1980), and in the UK (Richards 1987), which have drawn conclusions about the short and long-term effects of divorce on children, a key argument has developed to justify mediation. That by encouraging parental co-operation, joint decision-making, and co-parenting after divorce, the welfare of children is safeguarded both at the time of the separation and after the divorce. James argued that family mediation thereby locates itself in important debates about the autonomy of the individual and family against regulation by the state, and equally crucially, how we regard the process of divorce and what we regard as an optimum arrangement for the post-divorce family. James argued that, if mediation sees itself as having a welfare function with a priority of championing children's rights, it can easily become 'professional empires of experts and advice givers ... relying on the state to enforce and subsidise their jurisdictional claims' (1992:24). The danger would be that the mediation movement becomes part of an overseeing organisation that promotes intrusion in family affairs but without procedural formality.

There have been therefore, in the development of family mediation in the UK, theoretical underpinnings, social forces and diverse stake-holders, between whom there are inherent contradictions of values and priorities which are not always made apparent. Dingwall and Eekelaar (1988) early saw the dangers of family mediation espousing a cost-cutting agenda. If the criterion for funding becomes cost cutting and saving of court time, this makes it attractive to governments and accountants who may give less regard to the language of equality and justice. If the emphasis is on saving children, and promoting a particular form of post-divorce parenting, mediation locates itself in a key debate about family policy. In a multi-cultural society, it faces the challenge of operating with such assumptions in the context of a wide variety of family structures and child-rearing practices. If it defines itself by the 'therapeutic' model that responds to underlying needs, not only does it, in Roberts's view, contradict the basic principles of mediation, it also contradicts the cost cutting agenda. Irving and Benjamin (1995) estimated that a typical time for therapeutic intervention is nine sessions. In the not-for-profit sector, 'most mediations were concluded in a single appointment' (Davis et al. 2000: 34).

Is it possible to make any characterisation of family mediation practice in England and Wales, using Bush and Folgers' perspectives? Beckett (1998) argued that overall the 'satisfaction story' has dominated the development of mediation in the UK. An analysis of the training programme for family mediators for NFM services in England and Wales indicates the centrality of concepts of collaborative and integrative problem-solving rather than adversarial distributive bargaining. It focuses on 'opening up' the problem and reframing the contentious issues as a mutual problem. Yet there are also key elements of the 'transformation story' present. Mediation supports the parties' exercise of self-

determination in deciding how to settle a dispute and in what arena they want the dispute to be settled. It promotes self-reliance and self-respect as part of the empowerment of mediation, and encourages parties who began as fierce adversaries to acknowledge concern for each other as human beings, part of the recognition dimension of mediation. There is evidence that in practice, family mediation in England and Wales has moved increasingly towards a settlement-oriented approach, informed by what Folger and Bush call the 'satisfaction story'. Since family mediation was made an integral part of the divorce process in the Family Law Act of 1996, the progress of publicly-funded mediation has been monitored and researched. The report to the Legal Services Commission (LSC) (Davis et al 2000) focussed on the relative benefits and cost-effectiveness of contracting for the provision of publicly-funded and quality-assessed family mediation services. They described its findings as 'arguably the most searching examination of family mediation ever undertaken in the UK, ... the significance of the study was enhanced through its timing, coinciding as it did with a major allocation of public funds' (2000:1). From the wealth of data and comment the following conclusions are selected as indicating support for this view.

We find that family mediation has become heavily influenced by the notion of 'settlement' which is so powerful within legal proceedings. It would appear that mediators have to conform to this value if they are to attract government funding. Mediation is now judged by its capacity to reduce the demand for lawyer services, or the cost of those services. This requires mediators to devote themselves to *achieving success according to standards invented by lawyers* (my italics) (2000:xvi)

Legal advice and representation is the dominant model, with mediators being asked to prove themselves through their ability to deliver (at least part of) what lawyers deliver, but at reduced cost ... Some US researchers have argued that the objective of mediation should be 'transformative' rather than settlement orientated, that is, that it should aim to improve the relationships between the parties and not be concerned with whether the 'dispute' is resolved in the course of mediation. It is obviously open to debate whether this is an objective upon which public money should be spent (2000:136).

English mediation suffers greatly from its partial knowledge of the experience and literature of other countries in the English-speaking world ... It is clear that there is a much wider range of models of provision in the US, for example, than is currently acknowledged. Similarly there has been a tendency to import fashions without being aware of the critical debates which have been generated around them - the controversy in the US for example, between those who believe that the goal of mediation should be to facilitate settlement, and those who believe it should be to transform relationships between the parties regardless of the outcome. (2000:254).

The warning from Beckett (1998) is to some extent realised.

With the institutionalisation of the field and the concomitant need for funding we can see a growth of a satisfaction orientated approach to funding. We in the UK should take heed of Bush and Folgers' warnings about this story (1998:246).

This, combined with the fact that the funding and control are now in the hands of the LSC, suggests a form of mediation that is closer to a paralegal service than one which embraces a

transformative or social justice agenda. This becomes significant when we examine the use of family mediation by ethnic minority families.

Family Mediation in the context of social change in Britain in the late twentieth century

There is general consensus that from the 1960s onwards Britain experienced profound social, demographic, and cultural changes that had an impact on all areas of family life. Briefly summarised, these were: changes in the structure of work and industry that have changed the experience of work for both men and women, with more women now in the workplace, and the availability of effective contraception which radically changed women's control over their fertility. Connected to these structural changes there was an alteration in marriage and family patterns more radical and far-reaching than any in the last century. The following statistics are drawn from the Office of Population Censuses and Surveys (OPCS) figures for 1993.

Between 1983 and 1993, the number of marriages fell by 13%. The number of bachelor/spinster marriages has fallen sharply since 1970, but in contrast, marriages between a divorced man and a divorced woman have formed a growing proportion of all marriages (14% in 1993). The number of divorces fluctuated in the 1980s, but grew consistently from 1989 to 1993, the overall increase being 12%. Wives were granted 72% of divorces, a proportion that has remained constant for several years. There has also been a growth in the number of co-habiting couples. In 1991 23% of non-married women were cohabiting, a figure that represented a leap between 1979 and 1991 from 11% to 23%. Increasingly there are couples who never marry, implying that substantial numbers of

children are born out of wedlock (source: General Household Survey "Living in Britain". OPCS 1996).

It is important to stress that these fundamental changes affect everyone's life at the most personal and intimate level, and that there is a polarised response in public debate to these changes. Fox Harding (1996) set out a model that plots the different responses to these changes. On one hand the family is seen as the bedrock of society, so that single parenthood and absentee fathers are potentially dangerous for social cohesion, and social policy is viewed as a means of restoring and strengthening the 'traditional family'. On the other hand these changes are welcomed by others as signalling the demise of the 'traditional family' which was seen as the locus of oppression for women and children, especially in the light of growing awareness of the prevalence of violence towards women and children. We would expect therefore that this debate would be reflected in the attitudes and values that inform an individual's choice about marriage, parenthood and divorce. Shah-Kazemi (2000) argued that it is in these areas of family disputes that the ethical and spiritual norms of the parties are most clearly expressed, and that this affects both the negotiation process and the role of the mediator. Littlejohn et al (1994) likewise argued that individuals come to conflict with profoundly held, even if not always articulated, conceptions of morality, justice and conflict. They may operate in a social reality that may or may not match each other's and that of the mediator. The implication to be drawn from both Littlejohn and Shah-Kazemi is that mediators are working with conflict in an area of personal life where views and values about the conflict issues are contested. This insight is particularly relevant to mediation with families from different cultures.

How do we understand and interpret these changes in social life? Smart argued that in popular and political debate one theme dominates discussion about the family. This is 'the theme of decline and de-stabilisation caused by the rise of individualism and a lack of moral fibre' (1997:301). This theme of individualism has been developed by two sociologists, Beck (1992) and Giddens (1979, 1991), in a way which takes us far from this view of the family as part of a general theme of decline. They developed a counter discourse which provides 'a broad understanding of change...not reducible to individual motivation and moral decline' (Smart 1997:301). Beck summarised his book as

Sustained by the effort to understand the meanings that the historical development of modernity has given to the world over the last two or three decades. We are eyewitnesses of a break within modernity, which is freeing itself from the contours of the classic industrial society and forging a new form (1992:9).

He argued that, as industrial society developed, social life within the nuclear family became normative and was based on ascribed roles for men and women. As industrial society began to dissolve after World War 2, so the forms of the nuclear family have become de-traditionalised. Beck analysed the principles on which production is organised: the idea of contract between employer and employee, of the importance of individual competition and mobility, and of the importance of self-provision. The family by contrast has been based on principles of unpaid work, self-sacrifice, communality of interest, and dependence for support, largely ascribed by role according to birth and gender. He argued that the principles of production are now beginning to pervade the family, as individuals free themselves from structures. Nevertheless, the 'new world' is not one only of individual free choice, based on enlightened self-interest, but also of new constraints demanded by science,

which itself demands identification with social institutions and their ideologies. In this context, he argued that individuals respond with reflexivity. Part of this reflexivity is the search for happiness and intimacy in partnerships, which he characterised, not as a primal need, but one that 'grows with the losses that individualism brings' (1992:105). This is a point at which sociological theory and conflict resolution theory meet in an approach that is useful to the core of this research. Beck here offered a conceptualisation of marriage as essentially culturally and historically determined, rather than determined by a universal human need, as Burton would define it. Thus 'marriage', as it is brought to the dispute resolution process, has different meanings across time and space.

Beck developed the theme of individualism further in relation to gender issues. He argued that there are trends in late modern society (increased life expectation, fewer years spent in child rearing), which for women bring about freedom from the dictates of 'gender fate'. Other trends, however, reconnect women to their traditional role assignments, particularly their still unequal place in the labour market and the status of motherhood, which still act as an obstacle to occupational competition and career progress. Beck argued that these two catalysing elements are central to the antagonism between men and women today and that they emerge openly during divorce. Women then become aware of their economically disadvantaged position, and men become aware of the extent to which their fatherhood depends on the woman's discretion. The core of Beck's argument was that the demands of the labour market and the demands of relationships are now emerging as contradictory, and that couples are seeking private solutions to what are essentially structural changes. 'In short the private sphere is becoming reflexive and political' (1992:109).

This analysis is very close to that of Giddens (1991). His central thesis was that in 'the emergence of new mechanisms of self identity which are shaped by-yet also shape-the institutions of modernity ... self identity becomes a reflexively organised endeavour' (1991:5). He identified the 'transformation of intimacy' as of key importance, and characterised marriage as a 'pure relationship' (1992:6) in which external criteria have been dissolved. In marriage, trust is anchored not in kinship, social duty or social obligation, but is based on the demand for intimacy. He analysed Wallerstein and Kelly's work (1980) on the experience of remarriage and divorce, and argued that their stress on finding 'a new identity' after divorce, is an acute version of 'finding oneself' which modernity forces on us all. Relationships have become sources both of danger and opportunity, since they have become 'mobile, unsettled and open' (1992:14). Another key concept in Giddens' thinking was that of 'confluent love. He contrasted this with the idea of romantic love, and defined it as 'active and contingent', as opposed to the 'once and forever' quality of the romantic ideal. With confluent love, one seeks out the perfect relationship, and if one does not find it, one moves on until one does.

These theories, which seek to explain the nature of relationship change in post-industrial societies, raise key questions about cultural definitions of disputes. It is tempting to see similarities between traditional ethnic UK families before World War 2, and traditional family structures of Pakistani Muslim families. However the former, according to Beck's theorisation, derive from the demand of industrialism, and the latter from the economic structure of a pre-industrial society. It may be necessary to find a theory to explain the increased divorce rate in this community, which falls between the poles of 'individualism' and 'post-industrial adaptation'. The narratives of divorce may be closer to

El Bushra's (1998) description of women seeking clearer respect and sanctions for their roles in maintaining traditional relationships, and further from 'narratives of self-identity'.

Family mediation: law and social policy

These public and private debates about how to understand these changes in family life have influenced the direction taken by family legislation and social policy. Smart (1997) analysed three key pieces of current legislation, the Children Act (CA) in 1989, the Child Support Act (CSA) in 1992, and the Family Law Act (FLA) in 1996. She asked what discourses inform the legislation. Since family mediation has an established place in the FLA, it is important to this research to understand where it locates itself in these discourses which, Smart argued, are contested. Smart outlined two distinct phases in family law relating to divorce in the twentieth century. Until the 1960s, marriage was seen as essentially based on love and companionship, so that marriage was dissolvable if the conditions conducive to love were missing. The only basis for obtaining a divorce was that of the matrimonial fault, with the accompanying notions of the 'guilty' and 'innocent' party. Fathers' rights were historically dominant when the custody of children was considered, but gradually the ideology of 'mother love' meant that normally women retained the care of children. Smart argued that from the 1960s to the 1990s there was a change in the way in which divorce and marriage were seen, and with that change came a concurrent change in the divorce law. Demographers saw the pattern of marriage, divorce and remarriage as becoming common. Smart argued that the development in the 1980s of the desirability of the 'clean break' in divorce stems from the Men's Rights movement.

James and Richards (1999) challenged this argument and suggest that it was based rather on the then current child welfare orthodoxy, based on the contribution of Goldstein et al (1980) who argued that children are unable to cope with two psychological parents, and need only one. That parent decides how the child should be raised, while the other can have no legally enforceable rights. James and Richards also believed that solicitors preferred the clean break for their male clients, because of the tax and benefit advantages.

The dominant principle behind divorce legislation was therefore to facilitate divorce and to absolve men of their responsibilities to their first families. Smart argued that in the 1990s this consensus began to break down, and that family law began to pursue a new direction. It is significant that family mediation expanded in the geographical range of its service provision in the 1980s and 1990s, and was in a position, through its national body, National Family Mediation (NFM) to make a key contribution to the thinking behind the FLA of 1996. Smart argued that three key pieces of legislation embody the changed thinking:

The Children Act of 1989 embodied what Smart called three new principles that show the state's increasingly normative expectations of divorced parenting. First is the principle of *non-intervention*, which encouraged parents to negotiate outcomes without a court order. Second is the principle of *joint parenting*, which abandoned concepts of custody and access for those of residence and contact, so that parents have the same legal duties and obligations as existed before the marriage. Finally is the principle of the paramount nature of the *welfare of the child*, which in the context of the Act became synonymous with the right of the child to have two parents. In locating family mediation in these normative approaches, it can be argued that it joins the professional consensus, which Smart believed

informed the practice of courts and solicitors in the 1990's (1997:316). By offering a voluntary out-of-court service, mediation offered a method of dispute resolution that embodies the principle of private ordering. Giving preference to joint parenting as a preferred outcome is not made explicit in mediation practice, indeed a basic principle of practice is 'neutrality as to outcome'. However, one of the platforms of mediation has been to stress that the safeguarding of children's emotional health is achieved by continuation of contact with both parents in a non-conflictual setting. Dingwall and Eekelaar (1988) argued that their analysis of mediator behaviour shows that it is clear that mediators do orchestrate the session in ways that lead to the desired outcome. Goundry et al (1998) noted that 'references abound that joint legal custody is the preferred outcome for mediators, the custodial arrangement most valued by fathers' groups, and a successful arrangement only in very limited circumstances' (1998:48).

Where mediation places itself in relation to the child welfare principle, and the importance placed on consideration given to the wishes and feelings of the child, (FLA, section 11.4.), is more debatable. James and Richards argued that, despite the important shift in emphasis in the discourse about the rights of the child in divorce, in reality there has been little change in social practices (1999:35). 'As a general principle, if parents agree, the child's wishes and feelings are not a matter for separate consideration' (1999:33). They argued further that the shift in the FLA, away from formal legal process to informal out-of-court decision-making, might mean that there will be even less judicial scrutiny of decisions relating to children. Mediators have the responsibility to 'encourage participants to consider their children's wishes and feelings', but children are rarely directly consulted or involved in the mediation process, and there are problems for the neutrality of the

mediator when children's voices are directly heard. James and Richards drew on Giddens' concept of the 'confluent marriage', and argued that the theory breaks down when children are involved. It may even lead to their increased marginalisation, since the theory ignores the place of children as social actors. The implication of this argument is that disputes about children are located in a particular, and culturally determined, concept of marriage and of the family. The danger is that these often implicit values will ignore different cultural attitudes to child rearing and different, religiously based, norms of family life.

Smart argued that the changes in legislation that have been outlined are part of a normative shift towards blaming individuals for social change rather than incorporating the analyses offered by writers such as Beck and Giddens. She referred to the change as 'an important clash of historical forces' and argued that the FLA arose out of the concerns of child welfare specialists, or of cost cutting politicians and civil servants, rather than out of peoples' real life experiences. Piper and Day Sclater (1999), writing after the FLA was implemented, used the terms 'war' and 'battle lines' to describe the debates that accompanied the passing of the Act. They argued that the 'disputed territories' (1999:233), which are still to be fought for, are those of the meanings and significance attached to marriage, the family and the welfare of children. They analysed the important undercurrents which have been hidden in the public debates (1999:233), and the 'ambivalences which persist in the dominant discourses' (1999:234). In particular they argued that one undercurrent which has persistently failed to emerge in the public arena, or in research and policy-making, is that of race and ethnicity. They feared that divorce reforms would be predicated on a very particular model of the family that has little to do with the ways of the majority of people, including those in minority ethnic groups, organise

their social lives. They concluded that until there is culturally sensitive research in the area of marriage and divorce, social policy would not be adequately informed. That this warning has some foundation, is indicated by the following conclusion, drawn from the report to the LSC (Davis et al 2000).

The limited extent to which the pilot has been successful in extending mediation to ethnic minority communities is a cause for concern (2000:265)

Few providers have sufficient resources to enable them to undertake the research and development work which might enable them to design and provide appropriate services (2000: 265).

To summarise: it has been argued in this section that family mediation is located within British culture at the end of the twentieth century during a period of profound change in the domain of the family, the significance of which is contested. These changes have led to a response in family legislation that embodies particular political and moral values, and family mediation is located in that response. Mediation has been shown to occupy a value position in relation to the family, parenthood and the welfare of children. The next section explores in greater depth some of the critiques of family mediation, and indicates the areas in which it faces particular challenge.

Challenges facing family mediation

The previous section set out the theoretical base on which family mediation rests, and the post-industrial context in which it has developed. This section outlines the key critiques

of family mediation, and examines how far research in family mediation confirms or undermines these critiques. They will be explored under the following headings:

the embedded values critique; the effectiveness critique; the culture critique; the power critique and the gender critique.

The embedded values critique

It has already been argued (above p81ff) that family mediation occupies a position in relation to the family, parenthood and the welfare of children that is located in the culture and social structure of Britain at the end of the twentieth century. The implications of these often implicit values for successful engagement with the divorce experience of ethnic minority families have already been suggested.

The effectiveness critique

Evaluating the effectiveness of family mediation is a complex task, and at different times effectiveness has been measured by different criteria. Attempts have been made to establish settlement rates, the durability of agreements and consumer satisfaction that mediation reduces hostility and bitterness during and after divorce, that it reduces legal costs and that it protects children's needs during divorce. In the 1980s, research concentrated mainly on settlement rates and on consumer views. Davis and Lees (1981), Davis and Bader (1982), quoted in Parkinson (1997:322) looked at the work of the Bristol Family Mediation (then Conciliation) Service, and at the work with divorcing couples carried out in the neighbouring court-based service, and reported generally positive findings on mediation and its effectiveness. Davis and Roberts studied the work of the Bromley

Mediation Service between 1982 and 1984, and reported that most parents felt that they had been able, through the mediation process, to work out contact arrangements for their children. (Davis and Roberts 1988). The findings of Ogus, Walker et al (1989) echo those of the USA that mediation clients using voluntary services are more likely to reach agreements in less time than their litigated counterparts, and that client satisfaction is comparable to that with other divorce related services. The Conciliation Project (later the Relate Centre), based at Newcastle University and funded by the Lord Chancellor's Department (LCD), surveyed five project services that had moved from offering child-only mediation to mediation covering all issues, that is, finance and property in addition to children issues. They reported that full agreement was reached in 39% of all cases, partial agreement in 41% of cases and no agreement in 20%. Seventy per cent of the participants felt that mediation had helped them to reach agreement over finance and property and 60% felt it had helped them to reach agreement over children's arrangements. McCarthy and Walker (1996) found that, in a three-year follow-up, 63% looked back at their experience positively. This is comparable with reported levels of satisfaction among American and Australian consumers (Pearson and Thoennes 1989) rather than those reached in court (Walker, McCarthy and Timms, 1994). There was no evidence, however that the agreements that were reached out of court were, in the long term, more durable than those reached in court (McCarthy, Walker and Timms, 1994). Walker, Corlyon et al (1991) in a follow-up study of 369 parents who had all used mediation as opposed to litigation, found that four years after the dispute they were not experiencing less conflict in their relationships, nor were they less likely to seek legal remedy when conflict did recur. In an extensive American study of long-term satisfaction, Pearson and Thoennes (1989) found

that mediation has only a modest ability to alter relationship patterns. The most recent and comprehensive research (Davis et al. Report to the LSC 2000) noted that

People's experience of mediation is positive on the whole. There is a tendency for the not-for-profit sector to score higher on questions relating to children issues, and the for-profit sector to score higher on financial understanding" (2000:vii).

Most of those who had experienced mediation thought it had been helpful (2000:vii).

A major criticism of these researches has been that comparability across studies has been low, due to the lack of homogeneity between services. Two services may look alike on paper, but provide different services, often to different client groups, and in a distinctive local environment of attitudes among lawyers, judges and court welfare officers.

These studies do not address the criteria by which we judge whether a settlement is fair and effective other than by researching the reaction of consumers or by its long-term effects (McCarthy and Walker 1996). Theories of conflict discussed in Chapter 1 facilitate the development of more searching questions of how to evaluate the settlement or outcome of a dispute. If the objectivist approach to divorce disputes is adopted, they would be conceptualised as centring on the division of limited resources (children, property and finance). For these disputes, the settlement approach, with win/lose outcomes, is appropriate. If the subjectivist approach, which sees the dispute as rooted in the relationship of the parties, is taken then a resolution approach is more appropriate. However, if the conflict arises from social change, as Galtung argued (1996), then to resolve the conflict not only do changes in behaviour and attitudes have to be addressed,

but also in the structures out of which the conflict arose. Inadequate theorising about the nature of conflict has undermined the capacity of researchers in family mediation to conceptualise aims and outcomes that can be measured. The debate about definitions of 'peace', and about the scope of the conflict resolution agenda, has not been addressed in the same depth in the family mediation field. This weakness demonstrates again the relative isolation of family mediation from important and relevant theory in the conflict resolution field.

The seminal contributions of Bercovitch (1991,1996), and of Fisher and Keashly (1991), have raised conceptual and methodological questions which have provided the basis for research into the effectiveness of mediation. Their attempts to define the variables of the nature of the conflict, of the parties, of the stages of the conflict, and of the mediator and the nature of the mediator's strategies, and to relate them to outcomes, have not yet been adopted rigorously in the family mediation research field. The theory of conflict which is adopted, and of the mediation model which underpins the intervention, facilitate 'a normative theoretical grounding for evaluating success' (Reimann 1999:29). When the data on which this research are based is analysed, some key questions emerge:

What theoretical approaches are most appropriate to an understanding of divorce disputes in this community?

What are the structural and personal elements that give rise to, and sustain these conflicts?

What method of intervention is appropriate to each stage of the conflict?

Is mediation used most effectively in conjunction with other forms of intervention?

What model of mediation is most useful to these conflicts? By what criteria do we judge whether a settlement is successful?

These questions and the search for answers lead into a discussion of issues of power and gender that are the subjects of the remaining critiques.

The power critique

At the beginning of this research the concept of power was not seen as a central analytical issue. A brief overview of some key family mediation texts suggests that this limited view may be a reflection of its under theorisation. Parkinson (1997), Roberts (M.1987), Irving and Benjamin (1999), Bush and Folger (1994), focused on how power operates in the mediation session, on the techniques used to help the mediator to deal with it, the use of power by the mediator, and the issue of domestic violence and its possible impact on negotiations. Only one text actually attempts a definition of power in the context of family mediation. Parkinson quoted John Haynes' (1988) definition of power as 'control of or access to, emotional, economic and physical resources desired by another person' (1997:234). She also used a definition by Kelly (1995), who saw it

Not as a characteristic of a person ... but ... as an attribute of a relationship. Within the mediation context, power can be defined as the ability of a person in a relationship to influence or modify an outcome (1997:234).

Parkinson then characterised power as relative, as neutral, and as not static, especially in separation and divorce.

The narratives of divorce in the lives of the participants in this research made necessary a re-examination of these concepts of power, and a search for a theorisation which addressed the many levels at which issues of power are relevant to an understanding of conflict resolution in divorce. Feminist theories share an assumption that gender relations involve power relations. In the next section the sustained critique of family mediation from feminist theorists is explored, particularly on the grounds of its potential for disadvantaging women. The relevance of theories of power, discussed in Chapter 1, will be explored further. The actions and choices of the participants in this research emerge as pervaded by discourses governing family, gender, conflict, and its resolution. These narratives raise issues for the theorising of mediation in this cultural group and in a family setting. What theories enable us to understand why individuals arrange and conduct their family lives in a particular way? What factors contribute to stability, and what contribute to change? What role do mediators have in challenging discourses if they are perceived as embodying the embedded values of mediation? What ethical issues are there for the mediator in challenging, or not challenging?

The theories of power explored in Chapter 1 conceptualised power, not as a property of persons or groups, but as a relational phenomenon. Layder's (1998) theory of 'domains' facilitated an understanding of how power operates differently in different areas of life. A man who is powerful in the domain of work may, by reasons of temperament, not be powerful in the domain of the family. A woman who exercises in the family considerable power as a mother-in-law, may have relatively little power as a daughter. A woman who has little power in the home, may be empowered to challenge her status there, by access to employment, and to resources outside the family, such as legal and

advice and support networks. When conflict occurs in the domain of the family, Foucault's theory of 'the knowledge producing apparatus' of family, schools, churches and universities that underpin and sustain the dominant discourses of power, become useful. We can also begin to analyse the discourses which underpin the role of the third party in the dispute, and to see how this discourse differs from that of the neutral third party which is the dominant model in family mediation. Once the mediator is located in the context of power issues of race and racism can be included, and how their impact on the mediation session analysed. In family mediation theory, while the impact of culture is now beginning to be acknowledged, race and racism are rarely mentioned.

Jabri's (1996) discussion of the pervasiveness of the military discourse in society, and how it might be challenged, allowed conceptualisation of how paradigms of thought and action are translated from religious and political domains to the grass-roots context in which they can be either supported or challenged. It also allows conceptualisation of the way in which mediation could have a role in supporting and valuing these grassroots debates and counter discourses in a way that is respectful and empowering. In doing so, the focus is moved away from the negotiation process to a transformative model which allows previously marginalised voices to be heard. It defines a project that includes mediation, but also links to other forms of social action. It acknowledges the right and ability of the local population to influence its own affairs, and implicitly draws on the theories of Curle (1986,1995) and Lederach (1997), and their many-levelled approach to conflict and its resolution.

Thus, power is the concept that is most seriously under-theorised in family mediation. Insights from critical theory are useful in answering the complex questions

concerning power that arose from this research, and which most seriously challenge the mode of mediation currently adopted in England and Wales.

The gender critique

Family mediation has been the object of a sustained critique, mainly from North American feminists in the 1980s. The strongest objection centred on the issue of including in mediation women who had been the object of domestic violence. Critics argued that the physical safety of women could not be guaranteed, and that the risk of further violence would be increased by face-to-face contact (Parkinson 1997:2.21), and that consensual decision making is seen as not possible between victim and abuser (Hart 1990, Grillo 1991). Johnston and Campbell (1993) distinguished between four types of domestic violence: ongoing and episodic male battering, female-initiated violence, male controlled interactive violence, and violence associated with divorce. These categories sensitise us to the types of abuse suffered by men but which may be hidden from view, and to the particular dangers to women and their children at the time of separation. Researchers in the USA found that violence tends to escalate when women try to leave the relationship, and that separation does not necessarily end the violence (Thoennes et al 1995). Davis et al (1995, quoted in Parkinson 1997:253) found that men who attended mediation in the Family Court of Australia regarded an unwanted divorce and the loss of their children as a violation of their rights which they defined as 'emotional abuse'. Reimann (1999) hypothesised that men become violent when they perceive themselves as losing a power which they had assumed to be theirs by right. The participants in my research described a pervasive use of physical force during marriage and divorce, experiences that were confirmed by the community interviews. It raises the question of whether women who

challenge a traditional view of male power, by leaving the marriage, place themselves in a position of increased risk in a face-to-face encounter, which makes mediation an unsafe forum for them.

Family mediation has adapted to these concerns by building into its process steps for screening for domestic violence to ensure the safety of the participants in mediation, and training for mediators in domestic violence and power-balancing during the process. There is evidence to support the argument that mediation can be appropriate in some cases where violence has taken place. Thoennes et al (1995) found that women in a pilot mediation project in the USA, who had been excluded from mediation, wanted to feel that they had the right to make the decision for themselves. This debate became alive in England and Wales at the time of the passing of the FLA 1996, which endorsed mediation as the preferred approach to settling disputes at the time of divorce and separation. Two risks were perceived: that people would be pressured into mediation, and that cases inappropriate for mediation would be referred. From the data in this research it is clear that the solicitors interviewed, without exception, did not refer to mediation those clients who had alleged domestic violence, and regarded legal procedures as providing the most appropriate safeguard for their clients.

Following these critiques, researchers have taken an interest in the way that women experience mediation, taking the issue further than that of violence. Kelly (1989,1995,1996) found that more women than men judged their mediated agreements as fair. Kelly and Duryee (1992), quoted in Parkinson (1997:33), found that women preferred mediation because it allowed them to express their views, focus on the children and develop self-confidence. The Legal Services Commission report, (Davis et al 2000) showed

that the research on the experience of mediation revealed broadly favourable responses and 'women in general had revealed slightly more positive views of their experience of mediation than did men'. (2000:76). 'It is also of interest that "fear of violence", whilst featuring in a great many of these cases, appeared for the most part to be overcome in mediation' (2000:137). These studies indicate that women do not feel that their rights are not safeguarded in mediation, rather that mediation offers them a more sensitive and equitable process. Neumann (1992) who described herself as both a feminist and a mediator, offered a definition of power which she considered addresses the issue of gender in mediation. She defined power as shifting and relational, and conceptualised divorce as a crisis that affects the power of the spouses in critical ways. Women for the first time begin to articulate their needs and, in giving these priority, can become empowered. The feminist critique of mediation maintains that in the mediation session issues of power and gender are more pervasive and powerful than can be addressed by 'power-balancing techniques'. Goundry et al (1998) nevertheless argued that, for women, substantive advances have been made through the law, (although they do acknowledge critiques of culture and gender bias in the law) and that, in removing disputes from the public arena to the private arena of family mediation, women may find these rights are no longer safeguarded.

Reimann's (2001) introduction of 'gender as analytical category' encouraged a conceptualisation of how gender pervades conflict dynamics in a more rigorous way. Her definition of gender in terms of gender identity, gender symbolism and gender structure helped to structure such an approach. She examined three distinctive approaches to conflict resolution which were outlined earlier, that is the settlement, resolution and transformation approaches. She argued that, in the first two approaches, power structures, shifting

identities of masculinity and femininity are ignored and the conflict process itself is seen as gender neutral. This limited view of the significance of gender is present in the literature of family mediation. Divorce is conceptualised as a 'generic' human activity, in which men's and women's different ideas, values and experiences are irrelevant. Important research by Kolb and Coolidge (1988) suggested that women have different ways of making sense of the world and of acting in it. Kolb regarded 'place' and 'voice' as gender significant terms. 'Place is metaphor for the social structure in which disputing actions are set' (1988:380). Women may have natural problem-solving skills which are mitigated by a 'place' in which they feel discomfort. This may explain the research showing women's preference for mediation as a forum for resolving disputes. Research shows that women value a forum in which importance is given to the maintenance of relationships and to joint problem solving. Attention therefore needs to be given to the development of the settlement-seeking approach in family mediation, which in effect is a restructuring to conform to task-centred approaches (Grillo 1991).

The 'gender lens', through which family mediation may be analysed, will be used to examine how an individual's sense of gender identity contributes to the dispute and may be changed by it; how societal stereotypes of gender-appropriate behaviour operate in the context of conflict; and how structural factors pervade both the conduct of the resolution process and the limits within the participants can act. All three dimensions are important to an understanding of the way that gender is fundamental to the resolution of conflict.

The culture critique

It is remarkable that family mediation has only very recently begun to address issues of culture. Britain is a multi-cultural society, and in the fields of health and social welfare professionals have, since the 1980s, had to address issues of how different cultural groups define and experience physical and emotional health. Parkinson (1997) noted that the Newcastle research projects did not report finding Black or Asian clients among the target research groups. The LSC (2001) report noted that

The limited extent to which the pilot has been successful in extending mediation to ethnic minority communities is a cause for concern ... it seems clear, on the basis of our research, that apart from areas in which Section 29 has been introduced, no service has been successful in attracting referrals from ethnic minority groups, and from South Asian communities in particular (2001:265).

There has been a notable lack of research and theorising about why this is so. Piper and Day Sclater (1999) observed a lack of culturally sensitive research in the area of marriage and divorce in ethnic minority communities, which could be used to inform social policy in Britain. They argued that that the FLA of 1996 was predicated on a particular model of the family which is far from the way most people organise their lives, a view complicated by the persistence of racial stereotypes and the neglect of differences between ethnic groups. In the American context, Taylor and Wang researched the development and learning of children from ethnic minority groups in the American context. They noted that during the 1960s 'research was largely guided by the assumption that ethnic minority families were pathological' (1997:225) and that only in the 1990s have researchers begun to understand not only the factors which affect the negative social and academic functioning of children, but also the mediating influences of parenting styles and practices which are

unique to particular ethnic groups and which impact on this achievement. They presented their research as enabling us to understand the 'ordinary lives, meanings and values which do not readily fit into the white middle class model so valued by our society' (Piper and Day Sclater 1999:249).

Irving and Benjamin gave a broad overview of the state of research and practice in the field of family mediation with ethnic minority families and called it a 'critical but neglected area of practice' (1995; 306). They argued that, compared with the family therapy and social work literatures,

Concurrent concern with ethnicity in family mediation has not occurred (1995:307).

We do not know how practice needs to vary when dealing with families across ethnic groups, and often have "unconscious biases, given the power of culture to make us relatively oblivious to our own perspectives, behaviours and values (1995:309).

Insofar as the issue has been discussed in the family mediation literature in the UK, there is neither consensus about the reasons for this relative lack of engagement with ethnic minority groups, nor about what needs to change. Parkinson argued that when the ethnic origin of the mediator differs from that of the couple, additional questions need to be asked to decide whether mediation is appropriate.

Understanding religious and cultural traditions is important. The mediator's willingness to ask questions is more important than already possessing detailed

knowledge ... Nonetheless the way in which mediation is conducted may be alien to the couple and adjustments may need to be made (1997:46).

Later she referred to a study in the UK called Moyenda (Young Peoples Health Network, 1996), which followed the research agenda of Taylor and Wang (1997) in looking at parenting patterns in different ethnic groups in the UK, to see what mediating influences will affect outcomes in children's lives. Parkinson suggested that this and other studies should be drawn on when planning family mediation services in the culturally diverse society of Britain. Roberts (M) addressed issues of cultural norms under 'issues of serious imbalances of bargaining power' (1997:129), or under 'issues of attitudes to conflict' (1997:78). These approaches do not attempt to define culture as a separate analytical category.

A more searching critique was developed by Shah-Kazemi (1996). She argued that, while in disputes, there is an undoubted need for general guiding principles that are universal, mediation has not given sufficient importance to an understanding of the cultural and religious norms that enter the perceptions and responses of the parties. She argued that a mediator needs to demonstrate identification with the parties and that without this identification, professional competence is undermined. From this, she deduced that, mediators who do not assert commonly-held values would be seriously mistrusted. 'Where a community is in a minority, an outsider remains just that, no matter how sympathetic' (1996:6). Shah-Kazemi argued from this that mediation training should therefore be accessible to the 'natural helpers' within the community. These helpers should not be ignored because they occupy a value position within the community, which is often a patriarchal one. In this article, Shah-Kazemi was discussing some of the key issues in

cross-cultural mediation. Notably, a definition of culture and how it informs the conflict process, and the impact on outcome of the key variables of the role of the third party, and of commonly-held values between mediator and parties. At that point, it could be argued that she did not sufficiently conceptualise issues of gender and power which the data in this research suggest pervade indigenous processes of divorce dispute resolution. However she argued for an approach which acknowledges and values these processes. In a later article, she developed a cultural critique of Gulliver's (1979) model of negotiation, which is core to the process of family mediation as practised in England and Wales (Roberts (M) 1997, Chapter 5, *passim*). Shah-Kazemi observed that it has nowhere been clearly stated that this model cannot be situated in a cultural and normative vacuum, and that the 'participants' universe of meaning ... indelibly shapes the dispute management process' (2000:303). She then explored how negotiation, within the realm of marital disputes in particular, assumes a very particular complexity, since the dynamics of gender and the normative ethics of the parties are of particular importance. She analysed Gulliver's eight stages of negotiation, and at each stage explored how culture and religion affect the way the mediator may have to adapt his or her practice. In particular she explored some of the key dynamics in the conflict resolution process, which the later analysis of the data will show important factors. These are:

- The choice of arena or venue for mediation, and the preference for family or for outside mediators.
- How the parties perceive the dispute, especially in the context of divorce and marriage.

- The capacity of the disputants for joint decision making and the gendered nature of power. (I would also include at this stage, decisions about “core parties”.)
- Cultural differences in interpersonal behaviour appropriate to the stages of “exploring the field” and the open expression of feeling.
- Re orientation to a bargaining position and the development of options: how normative and ethical concerns might inform this stage of the process.
- The final bargaining stage and the testing of “reasonableness”. How often unacknowledged and cultural norms about child-centred solutions, and the importance of kin, may operate at this stage.
- The execution of the agreement, and rituals of affirmation: how cultural rituals may differ.

These perspectives acknowledge and develop the critiques of the Euro/North American model of mediation by Lederach and Cohen.

Shah-Kazemi argued strongly against the favouring of a neutral mediator who is outside the process and who does not share the ethical framework of the parties. She reiterated her earlier argument that

The ideal ... is for mediators to be of the same cultural background as the parties, since no form of training, however sensitive, can *a priori*, impart a fully comprehensive understanding of the “universe of meaning” that shapes our responses to the whole gamut of situations that arise in the course of life (2000:320).

It is important that we explore these debates in the light of narratives of marriage and divorce in different ethnic minority groups. Goodwin et al (1997) selected the Hindu Gujarati community in Leicester to explore relationships between married couples and their wider families and social networks. They asked how community networks were utilised when marital problems arose, and about attitudes of couples to the formal support networks and services offered by the local authority and voluntary sector. Although not directly relevant to mediation, this study gives useful insights into attitudes to mediation, counselling, and the merits of involving the family and wider community. One of the most significant findings of this survey was that over three-quarters said that they wanted to talk to someone who knew their culture intimately, that is a Hindu-Gujerati counsellor. However the use of religious leaders was strongly resisted, since it was felt that they would not fulfil the requirements of anonymity, objectivity and confidentiality (1997:32). A more directly relevant research by Pankaj focussed on

cultural attitudes, norms, practices associated with separation, marriage and divorce in ethnic minority families, and assesses the acceptability of the concept and underlying ideology of family mediation to diverse ethnic groups (the study) aims to assist mediation services adapt practices and policies to make service provision more inclusive and accessible to the diverse families of Scotland” (2001:vi).

The focus of the Scottish research was primarily on service provision, the perceptions of users and service providers, ending with recommendations for the services. Its overall recommendation is that ‘the concept of family mediation does not conflict with

the religious or cultural norms of any community' (2001:ix). However this does not appear to be based on an analysis of the mediation process and of its underlying values.

This overview of the debates within family mediation indicates the limited extent to which they are informed by theorisation from the field of conflict resolution at the international level. In particular the transformative model of conflict resolution has been neglected. The culture, gender and power critiques, insofar as they are addressed, have been mainly in practice-dominated terms, with little attention given to the underlying theories that inform the debates.

In addition to the data gathered from the individual and community interviews, the case-study of cross-cultural training with the Ismaili community will provide data that will give an unusual insight into these debates. A Euro/North American model of family mediation training is offered to a religiously distinct, but culturally diverse, group, and the discussions about its usefulness are recorded and analysed.

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CHAPTER THREE²

Immigration to Britain from South Asia after the Second World War; the experiences of Pakistani Muslims in Bradford.

The aim of this chapter is to provide a broad overview of the pattern of immigration to Britain in the second half of the twentieth century, with particular reference to family patterns and social change. The distinctive experience of Pakistani Muslims is described. The key characteristics of Islamic Family Law, and Islamic concepts of ADR, are set out as an introduction to the data.

A demographic profile

This section summarises the broad research findings on families of South Asian origin, and the structural factors that are affecting change and adaptation. The data analysed in this research are thus set in the context of national trends. The sources on which the findings are based are as follows.

- The census of 1991, which included for the first time an ethnic question, made it possible to reach an accurate assessment of the size and location of Britain's non-European minority groups, and to explore the economic and demographic details of each community in a more detailed way. The data that are used in Ballard and Kalra

² I would like to thank Mohamed Keshavjee LL.M, who kindly commented on the first draft of this chapter and of Chapter 5. Any remaining errors are my responsibility, as are all statements of opinion.

(1994) are drawn almost exclusively from the local base statistics released by the OPCS, and are analysed in a way that suggests underlying patterns.

- A further significant source is provided by the National Surveys of Ethnic Minorities in Britain, conducted by the Policy Studies Institute (PSI) in London in 1966, 1974, 1982 and 1994. Of these, the Fourth Survey of 1994 is the first that addresses specifically family issues:

We offer the first attempt at a qualitative map of minority cultures and identities, focusing on self projection, the importance of religion, the use of community languages, visits to countries of origin, views about 'mixed marriages' ... we also offer an analysis of ethnic identities which are not based on distinctive cultural practices (Modood et al 1997:7).

The starting point for any discussion of the minority groups in Britain is the population size of these sections of the population. The overall population of the UK is over 54 million (Ballard and Kalra 1994: 5). Of these, 94% identified themselves in the census as white. Of the remaining 6%, Indians are the largest group (830,000 plus), next are African Caribbeans (492,000 plus), then Pakistanis (474,000 plus), Black Africans, (202,000 plus), Bangladeshis (161,000 plus) and finally Chinese (151,000 plus). In assessing the future growth of these minorities, the striking demographic feature of this section of the population is the skew to the younger end of the age spectrum. Ballard and Kalra (1994) estimated that the minority population could grow in future years and could well stabilise at around 9% of the population. This concealed possible differential growth between different sections of the minority population, with Pakistanis and Bangladeshis set

to become a more salient component of the minority population. The figures from Bradford, discussed later, showed that this prediction was true of the Pakistani population of this city. The combined impact of patterns of migration and of higher levels of fertility suggested to Ballard and Kalra that the Pakistani population will eventually stabilise at about 900,000 or double the figures of 1994.

Difficulties in arriving at an estimate of the numbers of Muslims in Britain are well summarised in Anwar (1993:7ff.). Basing his figures on the ethnic question in the 1991 census, combined with information on the country of birth, Anwar arrived at a tentative estimate of the total Muslim population in Britain in 1991 as being 1.4 million. Of these, Indians, Pakistanis and Bangladeshis form the biggest group, at 770,000. In terms of distribution Pakistanis are unevenly settled around the country. In the West Midlands they account for 18.5% of the ethnic UK population, in West Yorkshire 16.9%, in outer London 12.3%, and in Greater Manchester 10.4%. Thus the Pakistani minority in West Yorkshire is second only to the West Midlands both in absolute size and as a proportion of the local population.

The 1992 census, backed by the information yielded by the 1994 Policy Studies Institute survey, yields information about key characteristics of family life among ethnic minority families. Ballard and Kalra commented that when we try to construct a profile of ethnic minority families we have to acknowledge that, in important respects, ethnic minority groups differ from each other as well as from the ethnic UK³ community. They argued that we have to move away from simplistic, bi-polar models which 'reduce all forms

of diversity to a monochromatic disjunction between black and white' (1994:23). There are no simple sets of differences between groups, but highly complex patterns of variation. For example, when looking at mean household size by ethnicity, the mean household size among all South Asian minorities is only marginally greater than amongst the ethnic UK community. This obscures the fact that among Pakistanis, the household tends to be large and tight knit, and the frequency of marital breakdown is low. Hence only 8% of Pakistani households are composed of single persons as compared with 27% in the ethnic UK community.

The PSI survey of 1994 asked questions about distinctive family and household patterns not only as a basis for family support networks, or to predict trends but also to provide indicators of people's cultural attitudes. It attempted to identify what distinctive pattern of family relationships was to be found in each community and whether these patterns were being retained or adapted by those whose families have lived here for many years. It found striking differences between the different ethnic groups, notably amongst those who stayed single instead of marrying, those who cohabited before marriage, the incidence of separation and divorce, and the nature of the trend towards one parent families.

Modood et al (1997) use the 1994 survey to show that, in key features of family life, there are striking differences between ethnic minority groups, and particularly between South Asians and Afro-Caribbeans. On the prevalence of marriage, the survey showed that 75% of Asians were married as against 60% of ethnic UK citizens, and only 40% of Afro-Caribbeans. The age of marriage was earlier, 78% of Pakistani women were married by the

³ Shah-Kazami (2001:16) uses this term, acknowledging that it was coined by Hussein and O'Brien (1999). It is useful because it signifies that "white" British people have an ethnicity, and avoids the notion of racial

age of 25, as against only 30% of Afro-Caribbean women. Attitudes to cohabitation and mixed-ethnicity partnerships were again pronounced. Afro-Caribbeans were most favourable to the idea of mixed partnerships, while South Asians were relatively unfavourable. The rates of cohabitation showed that only 1% of Pakistanis and Bangladeshis cohabited as against 20% of Afro-Caribbean adults. Of those who had married, 18% of the Afro-Caribbean group had separated or divorced, as against 9% of ethnic UK and 4% of South Asians (this included Indian couples and Asians from Africa). In relation to children, Pakistanis and Bangladeshis are still more likely to have relatively large numbers of children, but very few are born into single parent families. Nine out of ten South Asian families had children with two formally-married parents, as against 75% of ethnic UK and 33% Afro-Caribbean families. In terms of household structure, Pakistanis and Bangladeshis were unusual in the number of large and complex households, although there were signs that this was changing. Four out of five South Asian adults still live with their parents and a very high proportion of Asian elders live with a son or daughter.

The structural factors that influence family life also indicate a wide divergence between groups. Among people of working age, Pakistani and Bangladeshi men and women were the least qualified and, even in the new generation (16-to-24 year olds at the time of the survey), Pakistanis and Bangladeshis continued to be the largest group without qualifications. In terms of employment, Pakistani and Bangladeshi women had the lowest levels of economic activity but, significantly, among the small number of women who did have A-levels or degrees, the proportion in the labour market was as high as among other ethnic groups. Pakistani men were most dependent on self-employment (33%), and had the

origin as a determinant of cultural identity.

highest levels of unemployment. A breakdown of household income levels showed that 50% of Pakistani working households fall below the poverty line as compared with 9% of ethnic UK households, and 72% of Pakistani non-working and non-pensioner households as compared with 43% of ethnic UK households.

Modood et al also used the survey to look at elements of ethnic identity, surveying particularly the elements of self-description, religion, language, and identification with Britishness. They argued that perhaps their most significant finding was the primacy of religion as an element of self-description among South Asians, whereas for Afro-Caribbeans it was colour. Only 2% of South Asians describe themselves as having no religion, as against 31% of ethnic UK and 25% of Afro-Caribbeans. In the area of marriage, Modood et al considered that the most important socio-cultural difference between South Asian immigrants and ethnic UK society is the custom and practice of how marriage partners are selected. There were significant regional variations even within the Pakistani Muslim group within Britain. Three quarters of Pakistanis in north west England had a parentally arranged marriage as against half in south eastern England. The choice of a cousin as a marriage partner appears to be related to class, occurring twice as often among manual as among non-manual workers. In terms of self-identification with being British, 60% Pakistanis and Bangladeshis had the least sense of belonging, as against 71% of Afro-Caribbeans (Modood et al 1997). Modood et al concluded that South Asians are a distinctive group in terms of their religious identification as a marker of community membership and also in particular cultural practices. These include parentally-arranged marriages, preference for single sex schools for their daughters, wearing of Asian clothes, and a preference for religious schools. They noted that it is clear that among second

generation Asians, there is a strong ethnic identity even when they do not engage in core cultural practices. Modood et al considered that this might be one of the factors in understanding why they attract hostility, that is their perceived unwillingness to adapt to British ways.

Berthoud (2000) drew on the same 1994 survey, and posed some key questions about the diversity of family life among ethnic minorities in Britain. He asked why some ethnic groups adopt particular family structures, what influences stability or change in these structures, and what are the implications for the sense of identity of the minorities themselves. He argued that in answering these questions the structures have to be placed in a broader discussion of normative values in a multi-cultural society. There are two positions that can be adopted. Ethnic minority families can be judged by the standards of the host society or exclusively by the conventions of the country of origin. He argued that neither is satisfactory, since the families are now located in multi-cultural Britain. Berthoud's core argument was that, in the context of pattern of family life in Britain, there has been a move from 'old fashioned values' to 'modern individualism', and that this is true of all levels of society. On this continuum Afro-Caribbeans are in front, and Pakistanis are behind, but *all are moving in the same direction* (2000:3). He identified Pakistanis and Bangladeshis as adhering most closely to the traditional Asian pattern, compared with Indians and African Asians. As a group, they had more women spending their whole time looking after house and family, and had larger families. Berthoud argued that nevertheless these ethnic minority groups are moving away from their traditional positions, although the movement involves the reform of marriage rather than its rejection. He attributed this relative slowness of change to the emphasis of the family values in Islamic teaching.

A European perspective is provided by Husain and O'Brien (1999) who focussed on the experience of Muslim family life in three countries in Europe: Great Britain, Denmark and Belgium. They warned against the use of the term 'Muslim Family' and argued that it is important to clarify the social construct being discussed. Assumptions that it is possible to define 'The Muslim Family' ignore the importance of the socio-cultural setting in which the family is located.

It becomes imperative to look at current family models in each country of settlement while not ignoring the original socio-cultural/ethnic/religious base of many Muslim families (2000:56).

However, while recognising the diversity of Muslim family structure they acknowledged the idealised model of the Muslim family based on Islamic Family Law which will be discussed later. Husain and O'Brien's fieldwork was based on questionnaires to organisations providing help to Muslim families, review of cases, and in-depth interviews with users and professionals in helping organisations. They concluded that there are key issues facing Muslim families and service providers in Europe at the turn of the twenty- first century. Those most relevant to this research are:

- The clash of western liberal values versus Islamic values where women are concerned
- The increased incidence of divorce
- The weakened role of men due to unemployment
- The re-evaluation of power and gender equality from a Muslim male perspective and changing concepts of fatherhood

- Gender based issues in the treatment of young people particularly forced and arranged marriages, conformity to parental choice and violence against women, and inter-ethnic marriages

The conclusion from this overview of the demographic and cultural changes relating to Pakistani Muslims in Britain is that it is a community which is distinctive even by comparison by other South Asian groups. There is an assumption that the enduring importance attached to Islam and Islamic family values may have a serious impact on the process of family change in this minority group.

The Pakistani Muslim Community in Bradford

Lewis (1994) stated that

The northern industrial city of Bradford offers a unique vantage point from which to reflect on one of the most significant aspects of social change in Britain since the Second World War, that is the establishment of ethnic minority communities from the New Commonwealth (1994:1).

Bradford is an excellent place from which to study how Muslim communities are learning selectively to transcend national, regional, sectarian and caste differences, in pursuit of a measure of economic independence, political influence and religious and cultural autonomy (1994:25).

In the 1960s there was a substantial migration from the rural areas of Pakistan that had a tradition of migration. This pattern of migration was part of an established historical pattern in the Punjab. The money earned by the migrants was always sent home to the

villages to enhance the economic prosperity of the *biraderi*" (kinship network). Lewis, quoting Werbner, defined this as 'a localised intermarrying caste group' (2002:227). They settled in Bradford, attracted by the need for labour in the industries of textiles, engineering and transport. These industries required hours and conditions of working which were not attractive to local workers during a time of acute labour shortage. Lewis (1994) and Shaw (1994) characterised the early years of settlement as a period of migration, mainly by men of working age, usually living and working together, with the priority of sending as much money as possible home. Shaw (1994) defined this as the stage at which they still believed in the 'myth of return'. As fears about the tightening of the immigration laws grew, the late 60s and early 70s saw a changing pattern of migration. Women and children joined their husbands and fathers, so that, in Bradford as elsewhere, patterns of kinship and clan-relatedness were repeated in the cities of Britain. Lewis characterised this period as the beginning of adaptation from a rural peasant economy to being part of an urbanised working class. The decline of manufacturing industries in Britain hit Bradford, and most of the industrial north disproportionately hard. Unemployment is now extremely high among Pakistani and Bangladeshi men (Ballard and Kalra 1994:39). Combined with low levels of female unemployment outside the home for Pakistani women, and a high birth rate, the result is that 50% of such households have a standard of living that is half the national average. The demographic profile of this community presents many significant features. Simpson(1997) estimated that in 1994 the population of Bradford Metropolitan District, the fourth largest local authority in England and Wales, was 481, 000, and growing. He estimated that the Black and Asian population will make up one quarter of the population within the next 15 years, and that those of Pakistani origin are likely to rise from the 1991

number of 49,000 to 100,000 by 2011. Nationally, probably 60% of all Pakistanis originate from the Mirpur district of Azad Kashmir, while in Bradford the figure is certainly higher (Lewis 2002:216). There was anxiety that the publication of this report to Bradford Council and the subsequent publicity, would attract a racist response, but this did not happen, despite the riots of the summer of 1995. A particular detail of ethnic demography revealed by Simpson is of special relevance to this research. It is the continued influence of immigration on the District's population.

Simpson used the information given to Local Authorities from the Immigration Service about first residences of new immigrants to Britain. He believed these provide reasonably accurate indicators to the level of immigration to the district. Approximately 700 immigrants arrived annually in Bradford between 1992 and 1994, the majority being between the ages of 15 and 34. He estimated that these are likely to be the spouses of existing residents, since they are the only category allowed right of entry under the immigration rules. Comparing these figures with the estimated cohort for marriage already in Bradford, Simpson estimated that over one half of Bradford's South Asian marriages involve overseas partners. This is a key finding, and shows that immigration is most important for the Pakistani Muslim community in Bradford.

Lewis (1994) discussed a number of significant events in the history of Bradford's Muslim community, which have contributed both to a particular perception of them in the eyes of the non-Muslim world, and to the development of a 'Muslim identity'. Some of these events have had an international dimension. An early crisis was the 'Honeyford Affair' of 1982. The Head of a Bradford school published his view that in 'a class room dominated by coloured children, white children suffer disproportionately'

(Lewis 1994:150). This effectively drew attention to the tension between the preservation of the distinctive cultural identity of minority communities on the one hand, and the encouragement of social integration on the other. The subsequent demonstrations and picketing by Muslim parents of the school, and the narrow scope of the political debate, contributed to a perception that the issue was one of Muslim fundamentalism and extremism as against free speech. A more critical event was the publication of Rushdie's 'Satanic Verses' in 1985. The attack, as perceived by Muslims, on the Prophet, provoked nation-wide debate on key issues of free speech. However it was in Bradford that there were violent demonstrations, organised mainly by young Muslims, and without the support of community leaders. The burning of effigies, and, more offensively to British public opinion, the burning of the book, together with the pronouncement of *fatwah* by Ayatollah Khomeini, contributed to the perception of a fearsome and negative picture of Muslims in the city. The events of 11 September 2001 have contributed to a confirmation of these perceptions.

The Ousely Report (2001) spoke of a 'hardening of attitudes and intolerance towards difference' and of 'different communities seeking to protect their identities and cultures, discouraging and avoiding contact with other communities and institutions' (2001:6). Ethnicity was a key factor in the riots of the summer of 2001 in Bradford, since a large majority of young people involved was Pakistani, not Indian or Bangladeshi Muslim. (Lewis 2002: 216). The Runnymede Report (1997) noted trends among British Muslims towards territoriality and gang formation, and towards criminality, with a dramatic increase in the numbers of young Muslims in prison (Lewis 2002: 218). This is the social context in which this research took place.

Central to these events is the importance attached to religion. In Britain in the last forty years there has been a gradual and often disputed acknowledgement of the pervasive fact of racism in general (Parekh 2000: ch.5), and of Islamophobia in particular. Husain and O'Brien noted the predominantly negative imagery of Muslims common in Europe, partly influenced by the history of religious wars and of stereotypes of 'Orientals', exacerbated by recent national and international events. They believed that these factors have created unprecedented levels of critical reaction to the presence of Muslims in Europe. The narratives in this research refer only obliquely to the impact of racism and Islamophobia on their lives, experiences and self-definition, but it would be naïve to ignore the power of this discourse in the communicative process of mediation.

Shaw (1994) argued that Islam, in this context, is being used as a key defensive strategy for minorities in maintaining a distinctive cultural identity. Husain and O'Brien (1999) argued that a new development taking place among Muslims throughout the western hemisphere, but particularly in Britain, is the new 'identity signifier' of 'Muslim' and 'British Muslim'. They argued that this has multiple meanings and may include a religious observance without political expression, a cultural/secular expression that does not involve the practice or expression of belief, and a political Islam with faith embedded in a political agenda. Modood's (1994) finding, that only 2% of South Asians said they had no religious belief, makes this wide definition of religious identity more credible than an assumption of widespread spirituality or faith. Roald (2001) argued that many Muslims define themselves as such in the West when they would not do so at home, and that it is easy for non-Muslim researchers to miss this distinction. She believed that for women especially, the emphasis on their Muslim identity is not necessarily to do with religious feeling, but more as a form

of self-definition in an alien culture, and as a way of locating themselves in a particular history, structure and society. This discussion of a 'Muslim identity' is included since it emerges clearly from the data, particularly in the narratives of women. If the meanings and complexity that govern this concept are not acknowledged, but seen only as a matter of faith, then in the conflict situation there is the danger of oversimplifying its different significance to each individual.

Lewis (1994) analysed aspects of religious and community life in Bradford, and detected distinctive features that influence the process of change and adaptation within this particular ethnic group. Many of these features are important to an understanding of the data. Lewis analysed in special depth what he regards as a critical issue for the future of British Islam, that is, the nature of religious leadership in the community and its ability to connect with the experiences of Muslims born and educated in Bradford, and particularly those of women. In the process of community building, the mosque has fulfilled an integral role for Muslims, a sacred and social space in which the building of communal relationships plays an important role. It is a male-dominated space, with access for women limited normally to one specific area of the building, if at all. In 1992 only four mosques in Bradford provided any facility for women to attend Friday prayers (Lewis 1994:185). Husain and O'Brien argued that this effectively excludes women from discussion and decision-making, and 'denies them access to communal power structures' (1999:54). In Bradford, the mosques reflect the provincial and religious features of the communities from which they came. Each mosque and supplementary school (i.e. community language and Koran school) is controlled by a particular regional group. These regional groups also cluster in particular inner city wards, five out of seven of which return Muslim Councillors.

Lewis argued that a key issue is the extent to which the sectarian differences imported from Pakistan can be overcome to allow for engagement with new issues faced by all Muslims in Britain, and the ability of the leadership to tolerate questioning of religious belief.

Lewis (1994:257-259) defined the meanings of the terms used, often loosely, by the participants in this research when describing their contacts with mosques. The category *ulama*, (plural of *alim*, an Arab word meaning 'learned man') covers a variety of religious practitioners from the *imam* (the prayer leader in the mosque) to the *mufti* (the expert in Islamic law). *Mulla* is a term that may also be used to describe a learned person or *alim*. The functions of the imam are as follows: to lead the five daily prayers, to teach the children in supplementary school, to give the Friday address, to preside over the rites of passage (e.g. birth and marriage), and to give advice, within his competence, on the application of Islamic teaching to a range of issues put to him. Lewis characterised the *ulama* as people whose worlds are largely circumscribed within the mosque and whose mosque committees tend to appoint imams from their own regions in Pakistan. Lewis argued that one of the worst outcomes of the sectarian rivalry in Bradford has been the failure to establish a fully-fledged Islamic seminary in the city, thus freeing mosques from the need to import personnel from South Asia. At the time of his research in Bradford (1994) Lewis estimated that thirty functionaries had a position similar to a village imam with little more than elementary knowledge of Islam. Of the remaining thirty-nine, nine had university degrees from South Asia in addition to their formal qualifications. Only six of all the group had a good command of English, only three had formal contracts and all were dependent on their mosque committees for an annual review of their visas. The average wage was less than eighty pounds a week (1994:123). These factors, in addition to the

narrow focus of education in Islamic seminaries in South Asia, do not fit Bradford *ulama* to engage with the educational and cultural world of Britain. Especially Lewis described the supplementary schools as being 'a continuing cause of concern' (1994:140) since the style of teaching, methods of instruction and disciplinary procedures were judged by a Muslim educationist as coming nowhere near meeting the needs of the children.

When the data are analysed, the very limited nature of the role played by imams in divorce and the doubtful regard in which they were held by the young Muslims interviewed becomes understandable. There are also obvious reasons why many imams would find it hard to oppose the cultural expectations of behaviour in marriage and divorce, which may be pervasive in the mosque committees who are also their employers.

The inward-looking nature of the religious leadership in Bradford does not mean that there are not other foci for leadership and engagement in the local community. Nationally, Lewis argued that the debate following the events of September 11 showed the growing emergence at the national level of educated and self-confident young Muslims able to engage in debate on national issues. By the early 1990s Muslims in Bradford had become an integral part of the life of the city. There was an overlap in leadership in the Council for Mosques, the Community Relations Commission, and the business community, plus a growing number of councillors on the local authority, all capable of participating in local debates and activities. However, here is no unambiguous source of authority in the Muslim community, and there are several bodies in the city who challenge the view that the Council for Mosques is mandated to speak for Bradford Muslims. For example, women writing in the Bradford magazine 'Sultan' have exposed the difference between progressive and conservative Islam, and shown their preference for keeping their distance from the

ulama, preferring to learn about Islam from books or the internet (Lewis:1994;87). Ali (1992), researching lives of women in Bradford and the North of England, believed there is a need to challenge the male community leadership and to re-invigorate the secular and progressive traditions within the communities. Two further pieces of research, focussing on the lives of young women living in Bradford in the 1990s, explored areas of social life close to those investigated in this thesis. Mirza (1989) looked at how far young Sunni Muslim women in Bradford were conforming to a secular British society, and how influential Islam was in their daily lives. The interviews with ten Muslim women aged 17 to 28 showed the importance given to their Muslim identities. They used this as a way of defining themselves against the host community, given the difficulty they found in describing themselves as Pakistanis. Many expressed anger and frustration at the impositions placed on them at puberty, but defined this as due to culture and not religion. Knott and Khokher (1993) explored the relationship between aspects of religious and ethnic identity for a group of young women from a school in Bradford. They discussed two theories that have been offered to explain change and conflict in the lives of South Asians in Britain. One is that they are 'caught between two stools', drawn away from parental and traditional ways to the values of the majority society. The other is that they retain control and choice by 'having the best of both worlds', being able to switch identities as they move between two domains. Basic to both these explanations is that of the structural opposition between religious and ethnic traditions as against the secular, western world view. The accounts that they heard contradicted this dichotomy and were complex and shifting, and not reducible to general descriptions. Knott and Khokher also warned against the use, not only of the term 'Muslim' as an identifier, but also of the term 'Pakistani', since their

interviewees used the term in self-description, but had attitudes quite different from traditional Pakistani culture and customs. A general conclusion they reached is that religion and ethnicity are present for young people as part of their strategies for self-understanding and the negotiation of relationships with parents and peers.

In conclusion, the Pakistani Muslim community in Bradford still reflects the caste, religious and regional differences of the homeland. Despite the weaknesses that prevent the traditional religious leaders from exerting a leadership that engages with the difficulties of Muslims living in a modern secular society, this does not mean that there is no debate and challenge from other groups within the community. The data will show how, in the critical area of interface between traditional patterns of marriage and divorce, and modern secular society, tradition is being challenged by these groups, but within the framework of their own culture and religion. It enables the formation of a theory of how and why traditional dispute-resolution processes are being challenged, and what values and social processes are to be considered in framing what might modify or enhance these processes.

The Islamic perspective.

The Sharia

The purpose of this section is to explore the principles governing marriage, divorce and the arrangements for children as set out in the Sharia. This is not an attempt at an exhaustive legal analysis and is focussed on explaining the law necessary for an understanding of the data. It also explores the issues, for Muslims in Britain, of living in a society where two sets of legal mechanisms apply to identical situations (legal pluralism). Keshavjee (2002), argued that after some fifty years of settlement in this country, 'the time is fast approaching

when Muslims ... will be elaborating their own creative approaches with regard to settling their disputes' (2002:9). He noted that Muslim societies are themselves legally pluralistic, and draws on the research of Chaudry (2002) that found that in India and Pakistan, people turn to a multiplicity of fora to settle their disputes. Keshavjee argued that so far, British law has failed to acknowledge the extent to which Muslim disputes in Britain are settled extra-judicially, and 'that willy nilly, recognition will need to be given to the principle of legal pluralism ... (as they) endeavour to create a "space for Islam"' (2002:9).

It is useful to begin with the acknowledgement that, in the modern world Islamic law does not exist as a disembodied entity, over-reaching national boundaries and superseding national law. It exists only in the context of the nation state, and is enforceable only to the extent that the nation state decrees. It applies only to Muslims, and not to non-Muslims living in a Muslim community.

For Muslims, the Sharia is the word of God.

The Sharia covers all aspects of life and every field of law – constitutional, international, criminal, civil and commercial- but at its very heart lies the law of the family (El Alami and Hinchcliffe 1996:3).

The classical sources of Islamic law are the *Qur'an* (Koran), the Holy Book revealed to the Prophet, and the *Sunnah* of the Prophet, 'his statements and actions that are deemed to represent him as prophet and not only as a human being' (Abdalla 2000:167). The term *hadith* refers to all statements made, or actions taken by the Prophet Mohammed. These statements or actions were authenticated, validated and collected by several scholars over the years (Abdalla 2000:175).

The *Sunnah* remains, for Muslims, the ... uncontestable second root of divine law. However, it is far from self-explanatory; some *hadiths* will contradict others (Ruthven 1996:76).

The Koran is not a law book, and only a small part, at most 10%, contains legal injunctions, although there is general guidance on matters such as divorce, diet and inheritance. The Koran and the *Sunnah* are supplemented by two additional roots of law. They are *ijma* (consensus) and *quyas* (analogical reasoning).

Ijma derives from the process of scholars interpreting the law and relying on their own consensus about which *hadiths* could be accepted or rejected as a source of law. There are at least four schools of interpretation within the Islamic doctrine. Each is named after the scholar who established the school of interpretation, and their differences and disagreements extend to the various aspects of Islamic rules of behaviour, from marriage, divorce and custody to the rituals of fasting and prayer. Of these law schools, the *Hanafi* School prevails in the Indian subcontinent and is applicable to the lives of the participants in this research.

Qiyas, the fourth root of jurisprudence, is a form of syllogistic reasoning, applying logic to situations not mentioned in the Koran or the *hadiths*. The record of human understanding of the divine will is collected in a vast compendia known as the books of *fiqh*, which are not legal codes but offer guidance to judges (Ruthven 1997:81). This logical reasoning by analogy is an aspect of the effort known as *ijtihad*, which aims to fathom the law revealed by God and his Prophet. Thus, *fiqh* is the product of human endeavour and is achieved by a legal specialist who seeks to exercise *ijtihad* to reach conclusions about the Sharia, to determine God's will in particular circumstances. (Ruthven 1997:82). This concept of

ijtihad is crucial for understanding how Islamic legal scholars have been able to adapt the law to contemporary circumstances. The acceptance of the principle that 'the gates of *ijtihad* remain open' (that it is possible to exercise individual interpretation of the law in the light of modern circumstances), as in Shia jurisprudence, allows for more active involvement in contemporary issues. The Sunni position, that such an approach to law ended after the third Muslim century, makes such engagement more problematic. An example, cited by Coulson (1969), illustrates the employment of *ijtihad*. In 1964, in the High Court of Lahore, a case was heard concerning a young girl validly contracted in marriage by her guardian while still a minor. Under traditional Hanafi law, the girl could exercise 'the option of puberty' to repudiate the marriage providing the marriage had not been consummated. In this case the girl had cohabited with her husband for fifteen days, and the question was whether this nullified her option. In this case, the Bench affirmed that while the views of earlier imams and jurists are entitled to respect, the right to differ cannot be denied to present day courts. The concepts of 'justice, equity and good conscience' are as important as adherence to the doctrines of traditional authorities, and the court is thus allowed wider discretion in applying the Sharia law to the problems of society.

This discussion is included because it contradicts widely held views that Islamic law governing political and social relations is unchangeable; that in a society such as Britain the Muslim minority can exist only as a group governed by principles that are immutable, some of which stand in fundamental contradiction to English laws and values.

Ruthven argued that 'no subject is more fraught with controversy than the relation of women and Islam' (1997:91). The issues concerning the right of women to assert themselves in ways that are different from modes of assertion in western society, and the

interaction of religion, culture and politics are central to this research. Roald argued that a central issue is whether gender patterns as described in the *hadiths* are intended as eternal guidance, or whether there is room for reinterpretation of the Islamic texts on which the Sharia is based. Ruthven similarly placed the issue of women's rights in the context of the debate over modernism in Islam. Modernists see the Koran as revealed at a specific time and in a specific social context. Their task is to interpret it in the light of modern realities, and to rationalise the often draconian punishments against unfaithful wives, and the denial of inheritance rights to women. Muslim feminists argue that it is not Islam as such but rather reactionary male interpretations of the faith that justify patriarchal attitudes, and that Koranic provisions are time contingent rather than absolute. Several writers, notably Mernissi (1993) and Ahmad (1992) see a contradiction between the ethical principles of Islam and the restrictions to which Muslim women are subjugated. 'Muslim women...hear in its sacred text a different message from that heard by the makers of orthodox, androcentric Islam' (Ahmad 1992:65-6). Ruthven concluded that 'the signs of change are already apparent. Challenges to religiously grounded restrictions are inevitable' (1997:115).

Nevertheless, the presence of Muslims in a non-Islamic state can present problems to the existing legal system. Poulter (1998), while accepting the difficulties in trying to define core values in any society, argued that in the context of England and Wales, there are bedrock English values, embedded in its law and institutions. These he defined as: equality before the law, equality of the sexes, and basic civil liberties. Both Nielson (1987), and Poulter (1998) argued that it is in the area of personal law, relating to marriage, divorce and inheritance, that there is the strongest resistance to change among Muslims, and most unwillingness to adapt the legal definitions of the majority society. Poulter considered that

the claim by some Muslims in the UK to a separate system of personal law is partly due to the perception among Muslims that the Sharia lays down a higher standard of values relating to sex and the family, than does the majority society. The close interweaving of religious belief, legal principles and family relations in the Sharia is held in very high esteem.

In summary Muslims living in England find that in the area of marriage, divorce and the arrangements for children, they are subject to two sets of laws. One of these, the Sharia derives its authority from a source that some Muslim jurists, but not all, would regard as open to re-interpretation in the light of modern conditions. The personal law is seen as the area of Islamic law that is most highly regarded, and most resistant to change.

Marriage and divorce in the Sharia

The importance of Islamic law in the conduct of divorce has to be stressed.

What is evident is that whilst the self- perception of their Muslim identity has variable dimensions, all of the women are profoundly affected by the operation of the Sharia ... the existence, the perceptions, the interpretations and the applications of the Sharia have far-reaching ramifications for the women in their experiences of marriage breakdown ... it is the widespread ignorance of this inalienable dimension of their lives that compounded the trauma of marriage for them (Shah-Kazemi 2001:68).

The main source used for the following summary of Sharia law in relation to marriage and the family is El Alami and Hinchcliffe (1997).

In Islamic law, the marriage ceremony known as the *nikah*, is a contract and is not seen as a sacramental or divine union. Both parties must freely enter into it. In Britain, few mosques are yet registered for marriage, therefore, the *nikah*, whether carried out in the home or the mosque, in the presence of two adult male witnesses (according to Hanafi law), has also to be registered in a civil ceremony. This usually takes place before the *nikah*, and without it the marriage is not a legal one in England and Wales.

As part of the contract, money and goods are exchanged. These are of four kinds:

- The *mahr* (not to be confused with the dowry), which is a sum given by the bridegroom to the bride, which then belongs to her, and which she can demand at any time. The provisions for the *mahr* are rooted in Islamic law.
- Bridal gifts from the bride to the groom and vice versa.
- Gifts from the bride's family to the bride.
- The dowry, paid by the bride's family to the groom's family. This is rooted in custom and not in Islamic law.

In the marriage contract, certain conditions may be attached, e.g. forbidding a second polygamous marriage to the groom, devolving the power of *talaq* (for an explanation of this, see later), or clauses ensuring that the man pays maintenance to the wife if he stays away from her. In Islamic law, the man has to maintain his wife regardless of her own income and property, which she is entitled to retain so long as she submits herself to his control. This includes food, lodging and clothing. The Hanafi School regards this maintenance as a reward for the husband's control over his wife (El Alami and Hinchcliffe 1996:21).

In the case of a failing marriage, the Sharia advocates conciliation (a fuller explanation is given later), as an alternative to litigation. Divorce is permissible, but the *hadith*,

‘Among all things God has made legal, divorce is the most hateful’

encapsulates the complex attitude to divorce. ‘On the one hand it is permissible to end a marriage...on the other hand, divorce is a final resort, and to be avoided if at all possible (Shah-Kazemi 2001:7).

The most common method by which marriages are dissolved in the Muslim world is by the husband exercising his right of *talaq* (El Alami and Hinchcliffe 1996:22). The rules governing the dissolution differ between the five schools of Islamic law. All agree that the husband has the right to divorce his wife unilaterally: the variations lie in the number of times the declaration is made, the period of time which has to elapse between each pronouncement and the need for witnesses. The wife cannot remarry until after a period of four months and ten days (the *iddah*). Divorce may be effected by mutual consent- this is known as *khul*, when the wife wants to end the marriage, and *mubara* when it is mutual. *Khul* involves a payment of money by the wife and usually it is the repayment of the *mahr*. The wife also forfeits her right to housing and maintenance if the *nikah* is dissolved by way of the *khul*.

All schools of Muslim law recognise that the wife has the right to approach the court for a judicial dissolution of her marriage, but there is divergence between the schools of law on the precise grounds which would entitle a wife to do this. The classical Hanafi School is by far the most restrictive in this respect, and therefore several Muslim countries have reformed their divorce laws. In South Asia, under the Dissolution of Muslim Marriages Act of 1939, clear grounds are set out under which a Muslim wife can petition

for divorce, which are not very different from those available under English legislation. Carroll noted widespread ignorance among Muslims and their legal advisers in England of this right of access to divorce for women.

The divorce contract may have given to the wife the devolved right of *talaq*. If she takes advantage of this she must inform the *Qadi* or judge, who can also dissolve the *nikah* on a number of grounds that must be proven, e.g. refusal by the husband to maintain his wife, desertion or harm. The *Qadi* must take the necessary steps to satisfy himself that these grounds exist, and must inform the husband. In the UK, the Muslim Law (Sharia) Council (UK), (MLSC), can act as a *Qadi* in relation to disputes regarding the dissolution of marriage contracts, and can also mediate in intra-familial and intra-community conflicts. One central aspect of the MLSC's work is the ability to facilitate a divorce according to Islamic law, and to act in the capacity of a "Qadi" and function as he would do in an Islamic court of law (Shah-Kazemi 2001:10). Some of the participants in this research refer to it as 'the Sharia Council', and made use of its services, although the data suggest that there was limited knowledge of its functions among the participants.

Carroll (1997) stated that there is a fundamental distinction between the rights of the Muslim spouses in obtaining a non-consensual divorce. Men can gain a divorce by pronouncing *talaq* whereas women have to go to court. She quoted the Muslim Family Laws Ordinance of 1961, which applies to women in India, Pakistan and Bangladesh, and which stresses that a judicial divorce does not affect a woman's right to her *mahr* and maintenance during *idda*, and does not require the husband's consent. She believed that ignorance, social pressure and the persistence of tribal attitudes to the law and its enforcement, are forcing women to subject themselves to an interpretation of Islamic law

that is harsher than in South Asia. The continuance of the strength of these traditions as against the national law in Pakistan is illustrated by the following case reported in The Guardian (26 .7. 2002). Two girls aged 14 and 15 were forced into marriage with men aged 77 and 55 as compensation to end a family feud. The negotiations were conducted under tribal custom, but the courts intervened and the marriages were broken off. 'The Guardian' reporter commented that this was the second time in a month that brutal traditions had proved more powerful than the law in Pakistan. A subsequent comment on this case by a Muslim Correspondant (Guardian: 6.9.02) saw it as an example of 'the grim struggle taking place in Pakistan between progressive forces, and those who want to see the nation regress to the Dark Ages'.

Finance and arrangements for children after divorce

Islamic law requires the husband, after pronouncing *talaq*, to support his wife only during the period of *iddah* and to pay any deferred *mahr*. In Hanafi law, the parties can stipulate when the *mahr* is paid, either at the conclusion of the contract, or giving a proportion then and the rest when the marriage is terminated due to death or divorce. Carroll (1997) commented that there is no provision for the division of assets or for a level of alimony after divorce.

In relation to children, there is no mention in the Koran of who should have custody of the children at the time of divorce (Roald 2002:230). There are four *hadiths* which relate to the Prophet's handling of child custody issues, two of which give the right of choice to the child and two stress the rights of the mother. It is useful to bear these *hadiths* in mind for understanding those aspects of the data that deal with post-divorce parenting. The law

schools have deduced from this various rules for child custody. During the “nursing” period (variously defined as up to the age of 7), the child should be cared for by his/her mother, then by the mother’s mother. When the child comes of age (variously defined as any age from the age of 7 to the age of puberty for a boy, or at the age of puberty for a girl) he or she should move to the father. The father at no stage should lose his responsibility for the education of the children.

Legal pluralism

Having established the fundamentals of Islamic law in relation to marriage and divorce, it is useful to explore how they work for Muslims in the diaspora. Poulter (1998) contrasted the principles of Islamic law with those of English law in relation to family and divorce and indicated the key areas where there is fundamental conflict with English values. He argued that there are genuine principles of rights at stake and that there are areas in which tolerance of different customs cannot become a cloak for oppression and injustice. He called this ‘pluralism within limits’. Poulter argued that there are five main areas in which the principles and rules of English family law contrast with those of the Sharia. They are:

- The acceptance of marriage under the age of 16 and the potential for polygamous marriages
- The forced marriage
- The use of *talaq* in divorce
- The arrangements for children after divorce
- The financial arrangements during and after separation and divorce.

In this research the issues of under-age and polygamous marriages did not emerge as important issues, therefore the remaining four principles only are discussed.

It has been argued earlier, that arranged marriages have a cultural rather than a religious basis. Poulter (1990) pointed out that in the Hanafi School of jurisprudence the consent of both parties is necessary for the marriage. It is still possible, in this school, for two male relatives to impose a valid and binding marriage contract upon a minor. El Alami and Hinchcliffe note that the extensive power granted to marriage guardians in Hanafi law is greatly modified by the "option of puberty" (1996:7) whereby the minor may at puberty repudiate the marriage. Under English immigration law, a wife under the age of 16 would not be admitted to this country. In English law, a marriage is valid only on the basis of a freely consented union between two persons over the age of 16. The data will show that the distinction between 'forced' and 'arranged' marriages was not always clear and that consent in this context was a complex matter for the participants.

- The use of *talaq* is generally regarded as the aspect of Islamic personal law that most offends the principle of equal rights for women in marriage. In Pakistan, under the Muslim Family Law Ordinance of 1961, a man wishing to divorce his wife must first send notice to the Chair of the Union committee, and send a copy to his wife. The *talaq* does not become effective for 90 days, during which time the Chair may attempt conciliation by summoning representatives of both sides. This is comparable to the 'cooling off period' provided for in the FLA of 1996, during which reconciliation or mediation may be attempted. Pearl (1986) noted that in Muslim countries, there is a long tradition of recognising the 'bare *talaq* (that is, the pronunciation of *talaq* three

times in the presence of witnesses), as terminating the marriage in law. This is not recognised in English law as terminating the marriage.

Poulter argued that this custom is still widely used, that it undermines the wife's security in marriage and effectively discriminates against women. Roald argued that while divorce is treated very seriously in the Koran, it is, in reality treated very casually by Muslim men. Her research among Arab Muslims shows that men are often supported in the pursuit of divorce, while women are dissuaded. More importantly, there are no punishments attached to unacceptable behaviour such as violence or the refusal to support the wife financially. Poulter concluded that while there may be excellent ethical principles set out in the Koran, as a legal system it leaves much to be desired. There is disparity between legally enforceable rules, and rules binding on the conscience alone. While men have the unbridled right to divorce and to contract a second polygamous marriage, women are far from occupying the honoured position offered in the Koran.

- When looking at the arrangements for children, the Islamic rules come into conflict with the fundamental principle which guides English law in custody cases, that the best interests of the child are paramount. Poulter found that as yet (in 1998), there had been no case in English law when parents have asked for Islamic law to be privileged. The data suggest that in this area, as in arrangements for marriage, culture rather than religion governs behaviour. Roald, from the European perspective of her research found that in matters of child custody, practice in Muslim groups tends to change according to local legal requirements. Coulson (1964) however, noted that practice in this area in Muslim countries has changed. For example, in Pakistan, a case was heard at the High Court of Lahore in 1965 concerning a custody dispute over two children. In

the final judgement, emphasis was placed on the emotional and mental growth of the child as against a strict interpretation of the Hanafi Code(1964:111).

- In matters of finance and maintenance after divorce, the general movement in English law (see chapter 2), has been to underline the importance of the continued financial support by the father of the children of the marriage, while simultaneously encouraging wives towards financial self-sufficiency. Arrangements for maintenance and the division of property are reached under broadly agreed guidelines. The main areas of conflict after separation and divorce as revealed in this research, were over the *mahr*, over the ownership of goods accumulated during the marriage, and over the gifts given to the bride by her family. In these areas women appeared to be particularly vulnerable. In Islamic marriages, special conditions may be attached to the marriage contract, one of which may be the amount and method of payment of the *mahr*. Poulter argued that in reality very few women have sufficient bargaining power to put an “anti-*talaq*” clause into the contract and that often the *mahr* is too small to act as an effective deterrent to divorce. This lack of power may be related to issues of power between the two families, but it may also be related to ignorance of both Islamic and English law. These issues are indicated in the data. When the marriage is over, attempts to recover the *mahr* and the dowry, and to establish rights to personally owned goods are hampered both by the lack of sanctions in Islamic law, and by the difficulty of gaining restitution in English law. Poulter argued that in Islamic law these areas are governed by moral but legally unenforceable principles.

The woman can keep her *mahr* and any jewellery she acquired during the marriage. All guidelines regarding financial settlement are moral in nature... requesting the husband to show generosity, piety and to be honourable (Husain and O'Brien 1999:109).

Shah-Kazemi (2001) noted the difference encountered by women in pursuing civil proceedings to recover their goods, since these cannot be dealt with in conventional ancillary proceedings. 'The legal advice required would necessarily need to be creative and committed' (2001:29). The women she interviewed were extremely frustrated by the difficulties they encountered in obtaining redress from the civil court process, and by the extent of lawyer competence, even when the lawyer was Muslim. Similarly, at the end of the marriage, women again found themselves caught between, on the one hand, the (by English standards), limited nature of the view taken in Islamic law of the husband's responsibilities and, on the other, the difficulties encountered in English law, when dealing with traditional ways of acquiring and owning property.

Poulter (1998) argued that the restriction of the wife's right to maintenance to the period of the *iddah* is too low to support her properly. He argued that property holding in nuclear and extended families are substantially different, and that most Asian families, even when they live in nuclear families, still adhere to traditional ways of pooling resources and having co-operative arrangements in the owning and management of money and property. English law is guided by the principle that property belongs to the person in whose name it was purchased, and claims can be made to jointly held property only if the person can show that he or she made substantial contributions. In many instances we hear in the data from women who, on divorce, have no property settlement even though their husbands and his

family owned property. Both Poulter and Shah- Kazemi argued that in these cases the issue of the *mahr* and the dowry are best dealt with by informal mechanisms in the community. However there is debate about the effectiveness of informal dispute resolution processes in situations of inequality. Abel (1982) considered the arguments for and against the use of informal processes of justice, and asked how we can maximise their contribution to social justice. He argued that there is no clear evidence that processes of informal justice are more effective than inadequate formal ones. Significantly in this context, he used Foucault's theory of power to argue that mechanisms of control penetrate informal processes so that behaviour can be controlled. He asked whether informal justice organisations empower those who create and operate them, whether they have been imposed 'top down' or created autonomously from 'bottom up', and whether they are seriously contributing to an idea of countervailing power.

Some of the women in this study said that if they wanted to put clauses into their marriage contracts it might be seen as undermining the marriage. Others said they did not feel they could have asked for a civil ceremony as well as the *nikah*, or it would be seen as already thinking ahead to a possible ending of the marriage. If these issues of finance and property were to be settled by a local council organised in a similar way to the MLSC, a key issue would be, who would staff it, and what legal redress would be in-built for the users? Eekelaar and Maclean (1988) showed that maintenance orders made in court to divorced wives, especially those with children were too low to offset structural disadvantages of low earning power and loss of pension rights. This research suggests that formal legal processes are not necessarily better fora in which to address issues of financial equity.

This summary of the broad principles of Islamic family law, and of its operation alongside English law aims to facilitate understanding of how the working of the law influences the actions and choices of the participants in this study. It also indicates that knowledge of the processes and principles of both systems of law are necessary in advising Muslim clients.

Immigration law

The continuation of the practice of arranged trans-national marriages has had a direct influence both on immigration law and on the law of domicile, both of which are important in relation to status, marriage and divorce. Immigration regulations featured, in many ways, in practically all the marriages which are described in this data, and contributed a significant dynamic of instability. Broadly, the Immigration Rules, amended in 1985, require, when admission is sought for a fiance or spouse, that the parties should have met, and that adequate maintenance and accommodation are made available so that the applicant does not have recourse to public funds. In some cases, the investigation of the applications can result in a delay in entry for several years. The admission is then for a period of twelve months, which will be renewed at the end of that year, provided the marriage has not been terminated and both parties show their intention to live together. Shah-Kazemi (2001) argued that in some of the cases that she studied, the marriages were significantly changed by the impact of the immigration law. It laid women open to exploitation by men who used the marriage for the purposes of immigration. Women who came over here to marry were vulnerable in the knowledge that their stay here could be terminated by their husband's refusal to endorse their wife's application to stay. The same would also be true for men who came here as husbands or fiances, but who were vulnerable to pressure from the

woman's family, or because of their economically dependent status. There has been considerable debate (Pearl 1986, Poulter 1990), about the validity of *nikahs* undertaken abroad, about the status of wives married abroad to men who were Islamically still married here, and of the status of a *talaq* pronounced in Pakistan. These issues were not relevant to the data in this research.

Alternative Dispute Resolution in Islam.

Central to this research is the question of whether ADR is compatible with conceptions of arbitration and reconciliation in Islam. The two case studies analysed in the subsequent chapters show how conflict is managed during divorce in the Pakistani Community in Bradford, and how the world-wide community of Ismaili Muslims evaluated the dispute resolution mechanisms in their own communities. In that context they then sought to explore skills and techniques from western models of mediation which might prove useful, while retaining the Islamic values embedded in their own processes.

Several Islamic writers have argued that the principles of ADR are in no sense incompatible with Islam, and that similar values are deeply embedded in their religion. Irani referred to 'the distinctive rituals of hospitality and conflict mediation' (1998:5) in Middle Eastern society and politics, and noted that 'private justice is often administered through informal networks in which local political and/or religious leaders determine...conflicts between individuals' (1998:5). In particular he focused on the rituals of *sulh*, (settlement) and *musalaha*(reconciliation). He argued that the *sulh* ritual remains an important indigenous response to conflict, and that according to the Koran it aims to

'end conflict and hostility among believers, so they conduct their relationships in peace and amity' (1998:10/11).

Keshavjee (2002) argued that 'ADR is not new in Muslim thought' and refers to *hadiths* in the Koran which advocate 'the principle of resolving disputes amicably, calling on the protagonists to forgive: for to forgive is ennobling' (2002:5). He noted the particular arrangements for arbitration in domestic disputes:

Appoint two arbiters, one from his family, and the other from hers. If they wish for peace, Allah will cause their reconciliation. For Allah has full knowledge and is acquainted with all things (p.5).

Keshavjee quoted a sixth century Iman who described the preferred qualities of the arbitrator: 'persons of excellent character, superior calibre and meritorious record' (2002:7). He found that the civil codes of several Muslim communities, including those of Pakistan, Jordan, Egypt and Syria have the concept of *sulh* built into their civil codes. The Jordanian Law of Personal Status (1976), for example, contains elaborate procedures on reconciliation and arbitration, and outlines the procedures to be undertaken by an arbitrator to bring about reconciliation.

Keshavjee concluded that Islam is both familiar with, and gives high value to 'the reconciliation and settlement of disputes outside an adversarial, formalised context' (2002:8). ADR is therefore seen as essentially compatible with Islam but, importantly, it will only succeed if 'it takes proper cognisance of the embedded values of different cultures and contributions towards the reinforcement of the concept of community' (2002:10). In conclusion, one of the most important principles of transformative mediation, that of restoring harmony and social ties, is seen as essentially compatible with Islam.

ADR is seen, in many ways, as more firmly rooted in the religious and cultural processes of Muslim societies than in those of the West.

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CHAPTER FOUR

Narratives of marriage and divorce: the experiences of Pakistani Muslim men and women in Bradford.

Bridging the gap: searching for a theoretical approach to resolving disputes as a basis for resolution of divorce disputes in a Muslim community.

The focus of the thesis now changes to the micro-level, and to actual disputes. Real voices are heard describing the experience of conflict and attempts at resolution. It is an appropriate point at which to summarise the theories and models that have been discussed, and to examine how they relate to the theory and practice of family mediation.

The apparent polarisation of the two fields of conflict resolution and family mediation does not mean that they have developed in isolation. The importance of Burton as a theorist who drew on the theory and practice of ADR, and in turn contributed to the Harvard school via problem-solving workshops, has already been noted. It has been argued that family mediation in the UK has developed on the basis of a relatively narrow theoretical approach. This is not to deny the usefulness or effectiveness of the settlement/resolution approach, which increases when variables such as low parental conflict and relative equality of power are taken into account. However, the relatively low client base (Davis et al: Report to the LSC: 2000:273), and the low level of engagement

with culturally diverse families, suggest that family mediation is now in need of reappraisal and reinvigoration, in terms of its theory and practice. This reinvigoration could be sought in the field of conflict resolution and particularly, from the theorisation of conflict transformation and the triangular model of conflict that underpins it. This model allows the conceptual space for addressing issues of culture, gender and power, itself drawing insights from critical theory.

This is a 'pure' theory approach to finding a model that addresses a micro-dispute. It needs to be tested against practice and against empirical reality, and to be appropriate in real-life situations. The focus of the thesis now moves relating descriptions of real-life disputes in families in a particular ethnic group in an English city.

The theory outlined so far has set out generalised models, and provides tools appropriate to each model. Bloomfield (1995) argued that these have to be examined from the viewpoint of actual practice: that the task of the researcher is both to look at the actions and practices of those actually involved in the process, to see what they choose to address and what not to address. He proposed that these practice-generated criteria be called 'embedded criteria'. These will dictate the choice of model from the ground. Thus theory is approached using both inductive and deductive criteria. It may be that the embedded criteria of micro conflicts have significant points of divergence from macro conflicts. It may also be that the embedded criteria of the disputes in this particular community require a model that is so distinctive as to allow for no generalisation to other conflicts. However it 'builds into the theoretical model the spaces which must be filled by context-specific elements' (1995:162). The theory makes clear what is available; the embedded criteria decide what tools are to be used.

Layder (1998) developed a similar approach in his model for linking theory and data. He argued for an adaptive theory which uses both the deductive, or theory-testing approach, and the inductive, or theory-generating approach. In approaching the coding and analysis of the data, I began with the theoretical and conceptual framework outlined in Chapters 1 and 2, which guided the lines of enquiry in this research. These are:

How useful is the concept of culture in understanding how conflict is defined and experienced in this ethnic group, and what are the implications for resolution?

How useful is the concept of gender as an analytical category in interpreting the data, and what theories of power help the exploration of gender?

The data are coded on the basis of these themes. The 'concept indicator link' is used as a way of conceptualising the link between theoretical ideas and the empirical data they represent. For example, the data on the behaviour of the 'arrangers' and the 'arranged' in the setting up of a marriage, link to the concept of culture, with its components of explicit rules, beliefs, symbols and discourses through which experiences are reproduced as part of social life. The data on access to employment, to legal information, and to information about services and rights, link to the concept of gender, and particularly to the symbolism and structure of gender. The focus in the forthcoming chapters is on whether the theories discussed so far are useful in analysing and understanding that part of social life revealed in the data.

Introduction to the data

As the data will show, divorce in the Pakistani Muslim community in Bradford is sensitive both personally and socially. The interviews were gained only after painstaking approaches to key professional workers who were willing to pass on names, and in general it took

around five approaches to yield one female interview, and even more for men. Hence the interviews are spread over a relatively long period (Autumn 2000 to Autumn 2002). The interviews were all conducted at a venue chosen by the participant, and were usually in neutral locations such as the place of work or community centres. Some took place in the home, and these were usually where the participant had young children. All the interviews were taped and transcribed. They lasted on average from one to one and a half hours, and followed a semi-structured format, which aimed at minimal intervention from the interviewer when the most painful experiences were being described.

The community interviews were easier to arrange, and in part were built on my previous professional work in Bradford. They were carried out over the same period. They were not taped, but notes were taken and written up on the same day. The focus group was convened when the individual interviews were almost complete. It began as a proposed group of twelve participants from the community interviews, some of whom had also been interviewed as participants. They had all expressed an interest in examining provision for divorced men and women in their community and also agreed that the group would have the further function of checking the preliminary findings from the data. As arrangements for the meeting progressed it became clear that gender, and anxiety about what it was safe to discuss openly were important. Finally they met as a group of six female solicitors and community workers. The group met at the Peace Studies Department of the University of Bradford in the autumn of 2001, and the agenda contained these two items, that is discussing the data, and looking at future provision for divorced and separated couples in the Pakistani Muslim community. The discussion was tape-recorded.

The approach to structuring the data draws on Layder's (1998) approach to linking theory and social research (see Introduction above). The data elicited in this research

enable the reader to begin to understand a particular world, and the key task for the researcher has been to 'give voice to particular social groups, and/or to depict faithfully their meaningful social worlds and their subjective experiences' (1998:8). Nevertheless 'social life has both subjective and objective components to it' and the researcher has the task of 'understanding the systemic aspects of society and social life and how they are intertwined with the everyday world' (1998:8). I have also (see Introduction) referred to Giddens's structuration theory which conceptualised the tension between the frames of reference on which the lay actors draw in constituting their social worlds, and the critical evaluation of these beliefs and practices by the observer.

I began with a preliminary coding for analysing the data that drew on concepts and theories from the fields of conflict resolution, sociological theories of the family, family mediation, and gender. The next stage was what Layder argued is the crucial one of relating coding and data to theory. He suggested that 'theoretical memos' are the bridge. It will be seen that the data are approached with a code in mind (e.g. 'indigenous methods of conflict resolution'), the data are analysed and at this point questions are posed, gaps in the data noted, and links made with theories and concepts that are helpful in interpreting the data. The limitations of the theories are discussed, and theoretical debates begin to emerge.

All quotations from individual interviews, community interviews and the focus group, are recorded **in bold**. These quotations are identified by **(F)** for female participant, **(M)** for male participant, **(C)** for community interviews, and **(Fo)** for focus group participant. Where **(M)** and **(F)** are followed by a number and page, these refer to the identifying code for each interview and the relevant page.

1. The 'arranged' marriage

The data on which this section is based allow us to hear the experiences of individuals who had arranged marriages. Of the fifteen, two had what they described as 'love' marriages, although both were to first cousins. Only two participants married partners who were born in England, and they were from outside the family. The majority married partners who had been born and raised in Pakistan, and who were also close family members, usually cousins. The data reveal the 'lived experience' of arranged marriage from the point of view of the participants. I was not able to interview any 'arrangers', but the data give us the interviewees' description of the role of their parents and family in the setting up of the marriage, and some speculate on what their role will be when, as parents, they become the 'arrangers'.

The 'arrangers'

There is a commonly assumed distinction between 'arranged' and 'forced' marriages. The Report of the Working Group on Forced Marriages "A Choice by Right" defines a forced marriage as 'a marriage conducted without the valid consent of both parties, where duress is a factor' (2000:4). An arranged marriage is defined as one 'where the families of both spouses take a leading role in arranging the marriage, but the choice whether to solemnise the arrangement remains with the parties and can be exercised at any time' (2000:10). The data from this research do not endorse that distinction, and there appears to be a continuum of experience between the two poles, with many participants feeling they had little say in their choice of spouses.

The role of the arrangers, as described by the participants, is subtle, far-ranging, and occasionally coercive. Participants described the ways in which they feel they were raised with a strong awareness of how their marriages would be organised, and of the significance

this would have for the family. Several recall their perceptions, even as children, of the moral and social expectations that surrounded them.

I loved my childhood. My father brought us up Islamically practising, and that's what I always thank him for. We came from ... (a city in Pakistan) but because we lived in a rural community in Bradford, dad used to meet with them and bring back these terrible ideas. Sometimes, my father would threaten us with those forced type/arranged marriages. That he would take us there if we didn't behave. It is not unheard of, it does happen. That if girls are out of hand, then the best thing is to hand responsibility over to their husbands. So, because we were threatened in that way, we were not looking forward to going (to Pakistan). But when we got there, there was no pressure, just proposals coming in. (F) 10,p.1

I know loads of girls and friends who have to go back. They have to get married there, they have no choice. From when they're born it's chick fed (sic) into them. (F) 6,p.3

Most participants described regular visits to Pakistan during their childhood, when they stayed with family and kin. One participant said that when she and her sister went on a visit when she was 17, people jokingly said that they were going to find husbands.

It is the traditional thing that when you reach maturity you go to Pakistan, but I didn't pick up on it! (F) 10, p.2

I went out for my brother's wedding. I was 15 or 16 at the time. I had just started my A levels. There was a bit of match making going on! (F) 4, p.2

When I was 18, we went to Pakistan, my brother and me. They told my brother that I was getting married, and me that my brother was getting married. When we ended up there, we were both getting married! We didn't know about it. When I got there it was all settled, all sorted. (F) 1, p.2

I was 18 when I got married, working as a machinist. My parents arranged all that. They called him over and we got married here. He was my aunty's son. (F) 2, p.1

Only one participant was born and raised in Pakistan. She described how her marriage was arranged to a man already here in England.

Because he was a relative, the family encouraged it and so they arranged it. My mum told me what they were going to do as there was a big age difference. He was a lot older than me. (F) 3,p.1

Later, when this participant's marriage ended in unusual circumstances, her husband wrote to her family back in Pakistan and explained the reasons. He said that he was sending her back to Pakistan to get remarried, since he knew that everyone here would blame her. He arranged a marriage with a first cousin in Pakistan, who then came to England. The participant remembered her first husband with deep affection and admiration, and regarded this second arranged marriage as evidence of his continued care for her.

One participant, who had a 'love' marriage, said that she refused to marry a man from Pakistan.

My family were quite free like that. They never forced us. My mum said, “you make the decision and you live with it”. My brothers, they’ve all had love marriages and they’ve all got their own homes. (F) 6,p.2

When she came to make the decision to marry, she described the part she played in the process.

This family came. The parents always come first and ask and arrange it. My mum told me he was, like, my age and born here in Bradford. So I said “yes”. I didn’t know him. So they invited him round. He was right quiet. That was the first meeting we had. The second was when we got married. (F) 6, p.2

The following extracts are from male participants, and show the same feeling of relative powerlessness.

I was about 19. I’d been five years in England. Then I went back to marry a village girl. She is not of my family, there where not many of the right age. My mother arranged it; that is how we do it. (M) 1, p.1

I was just turned 18, I was very young. Even before I knew I was going to get married, they’d arranged it. With my father’s elder brother, his son’s daughter. My brother and I was in Pakistan at the same time, he was to get married and he was quite happy about it. They said to me, “I promise you are not going to get married”, but then they said of my brother’s wife’s sister, “this is the one we have chosen for you”. Mum said, “whether you like it or not you are going to get married”. I thought, “I’m 8000 miles from home, and they’ve got my passport. (M) 3, p.1

The experiences described in these narratives are confirmed in the community interviews, that trans-national marriages are still widely accepted as a source of partners for young men and women born in Bradford, and that the preferred partner is a member of the family, usually a first cousin. Siblings often marry other family members.

The data give indirect information about who the arrangers are. Mothers are usually highly influential in deciding who marries whom. The dynamics of particular families, however, mean that occasionally it is the father who is powerful in ensuring that the marriage takes place.

My father wasn't keen on the marriage, and when he came back here, (from Pakistan) he and my husband were not on speaking terms. But my mum convinced him it was what I wanted, so he didn't say anything. (F) 1, p.4

My mum's married twice and never got on with my father's side of the family, and so it was arranged between her and her sister, (F) 5, p. 2

He (her eventual husband) was suggested for my younger sister, because that particular brother, his father, got on particularly well with my mother. (F) 10, p. 3.

My mother was having a lot of difficulty finding me a husband from her small circle here. Then his Gran came over from Pakistan. She brought lots of photos and made me feel I had to act quickly. She really loved her grandson! (F) 10,p.6

When I went over there, my uncle was very annoyed. He was R's dad (R. had suggested as a bride for her husband), and he and my cousin's dad were business partners. Very cosy. I destroyed a lot. (note: she meant that the business arrangements were jeopardised by her choice of spouse). (F)10, p.7

The interviews with community leaders suggest that marriages are often arranged for family and economic reasons, one of which would be the advantages gained by migration. One imam said that marriages are often arranged for reasons of land and prestige in Pakistan, and that therefore, if one marriage breaks down, the implications for siblings who married into the same family are considerable, and may be used as 'leverage' in a dispute. A community worker warned that it is important to realise that 'the family' also includes the wider network in Pakistan, and that they are often intimately involved in the arrangements. A female advice worker who was setting up a group for women, believed that forced marriages are still common, backed by the use of threats and violence and the use of 'bounty hunters' who are employed by families to find erring girls. None of the participants mentioned the use of force at the stage of setting up the marriage, but such occurrences, however unusual, will be known in such a close-knit community. This is the knowledge against which decisions about the merits of asserting one's own choice will be made.

The experiences of trans-national marriages, recounted in these narratives are placed in context by the statistics quoted earlier (Simpson 1997). Why has this particular way of organising marriages remained so strong a feature of this community, and what implications does it have for the level and nature of future divorce disputes?

Most community workers were surprised by the continuance of the custom, and believed that it contributes to the instability of family life. Mirza (1989) confidently

predicted that the next generation of young Pakistani Muslims would marry partners who were born in this country. The research data suggest that the economic importance of migration to the family in Pakistan is still significant, and the historical tradition discussed in Chapter 3 continues to some extent.

If they (the family at home) are poor, they'll demand it (money sent back), and being a son, you have to do it, or you'll never live it down. (M) 3, p.6

At the end of the day, he came over to me to make money to send to his family. He was from a poor background, really poor. I mean, they had only two rooms. Then when I went back with my two sons, they had beautiful houses, so much land, and another house where the men sit and talk business. (F) 2, p.10

When my mum became ill, I said to my wife, "Let's go back to Pakistan to look after my mum. She's very old now and she's got no one to look after her". So I told her to come with me. She went and stayed two months, then she went back to England. So I married another woman in Pakistan in Muslim law, so that she could look after my mum. We have respect for elderly people, especially mother and father are important. And we don't like people who can give himself and doesn't. It is insulting your parents and insulting us. (M) 1, p.3

Most people in Pakistan look for marriages in England. It's to better themselves as well. (F) 4, p.4

Several community leaders thought that some men do use the marriage as a means of gaining the right to residence here, and often have little commitment to the marriage.

Shaw (1994), researching family life in the Pakistani Muslim community in Oxford, argued that arranged marriages are crucial to the survival of the 'biraderi' (the clan or wider kinship network, which will embrace kin and relations elsewhere in Britain and other areas of the world to which Pakistanis have migrated). She argued that the 'biraderi' is the crucial feature of Pakistani social structure. Women have a central role in maintaining social ties and, in this system, the control of the sexual mores and social mores of young men and women is seen as the essence of this role. Shaw went so far as to say that, without arranged marriages the 'biraderi' would cease to exist. She also argued that the continued custom of choosing spouses from the Asian sub-continent is a way of ensuring that traditional values continue in a society where they are perceived as under threat.

A matrimonial solicitor said that when a client approaches her, her first question is always, "Are you related?"

It always releases this spiel about all the relationships, and we see the dynamics. The whole decision, especially with families has shame and honour at stake. Ooh, it's "if you divorce my niece, then so and so will divorce your brother". The knock on effects are enormous. (Female solicitor, Fo)

The data show that the arrangers have familial, economic and survival reasons for continuing to organise marriage in this way, and that they inculcate, from an early age, the attitudes which will inform the way their children see their choices when they arrive at marriageable age. It locates the institution of marriage in a web of relationships and of community values that operate powerfully when the marriage is in difficulties. Avruch and

Black (1991) characterised marriage as a 'cultural fact'. It is a concept that allows us to see the behaviour described, as part of a characteristic way of seeing the world that shapes and informs perceptions of the self, of what is important and what is possible. It becomes apparent how different is this view of the self, of the family and of the community, from the 'confluent' marriage conceptualised by Giddens. It has profound implications for the way that we understand the implications of the dissolution of the marriage for the individual and the community. In the resolution of disputes during the marriage, the mediator has to engage with questions about who is included in the mediation of family disputes when the marriage is so strongly embedded in a mesh of economic, social and cultural ties. What are the implications of detaching the couple from this mesh, what meaning is attached to the term 'couple'? Using the terminology of Encarnacion et al (1990): Who are 'core' and 'concerned' parties? What is the nature of their involvement in the dispute? And what type of third party involvement, using what kind of intervention strategy, does this enmeshed dispute merit? When the data on indigenous methods of dispute resolution are examined, these questions are further explored.

It is important to note that the data show the difficulties in generalising about arranged marriages, and of ignoring variations in the extent to which the practice is questioned or accepted.

You must bear in mind that we are not a homogenous community. There are threads running through, but all families are different. Our families came over with different value systems and have hung on to them, but each has changed and adapted in its own way. Each household differs. (F) 7, p.9

The 'arranged'

The data provide insights into the way that young men and women, the majority of whom were born here, responded to their arranged marriages. It provides richer insights because we can hear the narrators recalling their feelings at the time of the marriage, and how they negotiated their way through. Also included are the community interviews that give the views of professional workers. They tell how these young men and women adopted strategies that allowed them to exercise a measure of autonomy and control. The analysis will draw on Giddens' theories of how power pervades different domains, how it is challenged, and how we can theorise about social change. The data also shows the development of a counter-hegemonic discourse, albeit at a tentative stage.

A striking finding from this data is that few of the participants felt that they had any power or influence in the arrangement of their marriages. Some explained this by referring to the exercise of power and authority, such as threats and emotional blackmail. Most, however, described a process of inner consent, or at least submission, that prevented any real assertion of preference.

To tell you the truth, you don't have no feelings. Something happens. I don't know if it's for the family's sake. You just shut your gob and do it. You don't have the ability to stand up and say "no". You don't, whether it's a boy or a girl. When you're 18 to 21 you rely a lot on your parents. You think, "what are the consequences, will they disown me?" They have this thing, a power over you. (F) 1, p.2

If I'd said I wasn't happy, it would cause a lot of arguments, and they end up taking you to Pakistan and doing it there ... I was frightened. (F) 2,p.1.

I did have a choice, but we weren't brought up to speak our minds. I'd known I was going to marry him from the age of 13, but didn't meet him. We married in Bradford, my brother married his (her husband's) sister on the same day. Sometimes I didn't know whose wedding it was! (F) 5, p.2

I always knew I didn't want to marry a man from Pakistan. My father was a very religious man, and he never said, "You have to go to this or that man". Then I met my cousin and we realised we liked each other. Then he got his mother to come and ask for my hand. So as far as my family knew, it was an arranged marriage! They didn't know all the rest! (F) 7, p.1.

It was quite traditional to marry a cousin. If a brother and sister get on well in a family, you think, "why not?" Often, if you don't know the family, the risk is your daughter may not be happy. So it's seen as safer to hand over your daughter to some one you know, to guarantee a good life. You can intervene and help. (F) 10, p.3

With Muslims there is sense of romance. The idea that the only man you have slept with is your husband. A big part of your life is your marriage, and you look forward to it. I think that is lost in western society; by the time you're 15 you've done everything. (F) 10, p.3

My husband was under pressure, even more than me. He said it was forced, but he didn't stand up to it and that's his problem. (F) 6, p.4

I'd rather not talk about the family pressure to get married. Deep down, they knew and I knew. Later, she said she had never wanted me; that just as I had argued against my dad, so had she. (M) 2, p.2

Eventually I gave in. I was very hurt, I really was. They were my parents. But they sat me down and said, "It's a matter of our honour here. I've given my word and you're going to let me down". I said, "I'm not promising anything, but I'll give it a go and see what happens. If it doesn't work out, don't blame me. (M) 3,p.2

When asked how they would expect their own children's marriages to be arranged, out of 15 only two said that they would not arrange their children's marriages. The majority said that they would allow them to meet and get to know each other and, in the final resort, to have a veto. Many said that at the time, their anxiety was about their spouse's lack of English, or about the difference in background. Many reflected on the compliance of their siblings and their subsequent happiness with spouses from Pakistan.

My brother went there, and spoke to his wife and got to like her. He said, "Fine, I'm not bothered. (M) 3, p,1

My sister's arranged marriage went ahead. She decided that was whom she wanted to marry, and she's still married with three kids and a fourth on the way (F) 10, p.2

My brother had never met her before the wedding. She was a bit far out as a relative. When he got there he wanted to meet her, you know, wanted to have a talk with her. And my father was all for it because he is quite westernised. But my uncles back there totally disagreed. (F) 1, p.2

I was the third of three sons. The first son married a cousin on his father's side, the second a cousin on his mother's side. When my turn came, I wanted to marry out. My parents arranged for me to meet a girl from (an English town) and I visited for five weekends. Then I agreed to the marriage, but I could have said "no", and so could my wife who had already rejected two other suitors. But my parents are unusually understanding. (A male community worker, not one of the sample).

The level of acceptance of the principle of arranged marriages may explain another unexpected finding that emerged from the data. This was information about the ways in which participants sought to exercise control by delaying the marriage and the entry of their spouses from the subcontinent, and to use the immigration law as a way of ending unwanted relationships. Several of the participants were quite open about the way that they had used the requirements of immigration law to delay the entry of their spouses to Britain after the *nikah* had taken place in Pakistan.

My wife came over later; it took about four years. It was all the immigration thing, all the paperwork. I didn't push it on. I wasn't really bothered or looking forward to her coming here. (M) 3, p.2

It started to go wrong after a year. And I didn't want to support his application for residency. I was thinking, "Send him back if it's going to be like this". (F) 4, p.6

A solicitor saw many of her clients who came from Pakistan for arranged marriages as very vulnerable. They are liable for deportation on divorce, even if their children are born in England. A community worker who specialises in immigration law said that she had seen both men and women use the law for their own ends. She had experience of women who went along with the marriage to please their parents but who already had relationships, and had no intention of making the marriage last. They may sign the forms to get the visa for their husbands, but write privately to the Home Office to block it. A man may behave well in the marriage for the first year, and then leave once he has obtained his residence permit. Another community worker had experience of women getting violent husbands deported before the first year was up.

Two solicitors, discussing their clients who were suing for divorce, said that in their experience, clients who had had an arranged marriage did not feel that they owned either the power or the responsibility to sort out problems during the relationship.

She said, "My parents made the decision, let them deal with it.

I saw a young man who couldn't for the life of him say what the problems were. His mum and dad were there and all he could say was, "They fixed me up with her in Pakistan and I just don't like her. I want a divorce, then I'll go back to Pakistan to choose some one I like. (solicitor, Fo).

The story of one participant gives the most telling example of the ways in which values and tradition govern the lives and choices of these young men and women in ways that were

seemingly surprising even to themselves. She was a young female graduate who later progressed to a key professional position in Bradford. At the age of 21, after reflecting on her four-year engagement to a younger first cousin, she decided to fly to Pakistan to decide for herself if she still wanted to marry him.

It was unheard of in those days! All very British and western, but really the whole family's reputation was at stake. It was seen as a big insult not to go to your relations. What a stir! All (city in Pakistan) knew! Eventually I met him. There was a furore. Shame. "Where is your mother?" They called her and she flew out. They said the *nikah* had to take place straight away. I knew it was wrong and all the problems were there right from the start. But I flew back in a week. Married. (F) 10, p.6

It is clear from the data that women can use their positions in relation to husbands coming from Pakistan to exert, at least for a time, considerable power in the marriage. The immigration law requires that the wife must demonstrate that she can support her husband. Some believed, wrongly, that they had to own property. If the woman is earning, sometimes in a well-paid job, and is a property owner, a young man arriving with no skills, no relations, and little English will find himself in a disadvantageous position.

When he came here, he was really worried because I had three elder brothers, all highly educated, one a doctor. Nothing in common with him. (F) 10,p.3

I think when my husband came it destroyed his confidence. It is the tradition that the man is the breadwinner, but he was waiting for *me* to come home from work. For three years I didn't let him work, then he took a bakery job just to get him out of the house. (F) 10, p. 6/7

Young men who come here are often powerless and treated very badly. A young woman who is born here will know her way around and will often extract promises before the marriage, e.g. that the house should be in her name. (Community worker, C.)

Some women participants described how their divorced spouses had gone on to marry other women from Pakistan but had sent them back before the year's residential qualification was up. One of the male participants had a grown-up son who had a long-term relationship with an ethnic English girl and had a daughter by her. The son had married in Pakistan, but had blocked his wife's entry for several years. Several of the participants' ex-husbands had relationships and children with ethnic English girls. A key member of the Council for Mosques estimated that there are some 200 children in Bradford of mixed Asian and ethnic English parentage. Some community leaders interviewed in the sample thought that the trans-national marriage was a source of instability in the relationship and was becoming a serious problem for the community. They explained its continuation as serving the purpose of ensuring, at least for another generation, the continuation of traditional family values. One community interviewee argued that the continued immigration of young men from Pakistan also reinforced traditional attitudes in the mosques.

2. The Experience of Divorce

The conflicts described by the participants centre on divorce and the re-ordering of the family after divorce. It is important to understand how divorce is experienced and perceived in this community. There are no statistics on the incidence of divorce, and the judgement of its increase is based on the evidence given by matrimonial solicitors. They reported,

without exception, marked increases in the applications for divorce in the last few years. The data so far have suggested that the arranged marriage has a comparable impact on the lives of young men and women, but the data on divorce suggest that gender differences at that stage are very important.

The majority of the participants believed that it is harder for a woman from a Pakistani Muslim background to obtain a divorce than for a man. The community interviews supported this. Reference has already been made to the different provision in Sharia law for access to divorce. The data give information about attitudes and self perception.

**There is a lot of stigma and hostility still attached to women on their own.
(Community worker, C.)**

The concept of *izzat* is important. It sees the woman as the backbone of the family. (Community link worker, C.)

There is a strong sense of shame for a woman” (Trainer, Bradford MDC, C.)

I come across women who don't want to be alone, and who don't want to be seen as divorced women. (solicitor, Fo.)

The term *izzat*, which was often referred to by the participants in the research, requires definition. Wilson (1978) describes the contours of this term:

Izzat, the sensitive and many faceted male family identity which can change as the situation demands it - from family pride and honour to self-respect and sometimes to pure male ego Wilson (1978:31).

Honour, pride and ego are always assumed to be male ... izzat belongs to the men of the family. A woman's role is to nurture this izzat and to bring up her children so that they too understand it Wilson (1978:33/34).

Family honour and pride, which are so easily upset by a woman's actions are far less easily affected by a man's errors. A married man's promiscuity, for example leaves his family's izzat in impeccable condition... In contrast, if a married woman were unfaithful to her husband, she might have to die for izzat to be restored. Wilson (1978:34/35).

The women themselves saw themselves as always blamed for the marriage breakdown:

They always think it is the woman's fault. (F) 6, p.8

It is always the woman who gets the blame at the end of the day. It is always their fault. (F) 2, p. 10

It doesn't matter what happened, she's divorced and that's it. It's hard. Especially if you get married again and go to another family, and there's all the talk. It's not nice. (F) 3, p.3

I couldn't break up the marriage ... an Asian woman and the tradition. I couldn't walk out. Either the marriage was finished or I would kill myself, so I took an overdose. (F) 5, p, 5

When I said I wanted a divorce, my brothers saw it as a threat to *their* marriages because they had married within the family. (F) 9, p.1

Only one participant said:

There was no shame about the divorce. My family said it was my right to divorce. They saw the suffering I had been through. (F) 10, p.8

Most women expressed anger at what they perceived as unacceptable behaviour from their husbands. This behaviour included physical violence, refusal to accept financial responsibility for the family, continuing with behaviour more acceptable in a single man, lack of commitment to Islam and unwillingness to take their side against powerful mothers-in-law. The participants persevered with their marriages for an average of ten years before finally making the decision to separate,

Seven times I went back to him. Seven times. (F) 1,p.7

Fourteen years I was married to him. I tried. I gave it everything I'd got, but it were no life. For fourteen years I lived for the family, I lived by The Book. I'd done everything you should do for a husband. (F) 2, p.6

I'm reluctant to make the move to divorce. I think it's to keep the peace in the family. And I don't want to get married again. I don't want my son to think it is all my doing. I don't think I ever wanted a divorce. (F) 4, p.14

After separation and divorce, the reality, as reported by most of these women is that they feel socially isolated, and in one instance, actually at risk.

It's like, even your cousins, when you're married, they all come to the house and bother with you. But once you're divorced, that's it. It all stops. I go to my mum's and brother's and that's all. (F) 2, p.9

We are very restricted, it's as if we had a label on our heads, saying "She's in a western society and she might do things". (F) 2, p.11

There's a lot of stigma in our community. Every one wants to gossip about it and ask questions, mostly about S. (her son). (F) 6, p. 11

I don't think any one would marry a lady who'd been married before. They'd go out with her, but not marry. (F) 6, p.11

I was three months in the cottage on my own and I was harassed by the husband of one of my cousins; as if I were a loose woman. Other women have it too. It's a punishment for ending the marriage. (F) 8, p.7

I keep a low profile now. One person, a man, described me as "over friendly". When I dress like this (western style), they say, "too low". Now I say to myself, I don't have to listen, so I have my own circle of friends, at work (F) 8, p.9

I now realise there are certain people who do treat me differently now I am separated. I met a distant relative, and invited her round but she never came.

Like a leper! But it is more acceptable in the community now. (F) 7, p.8

Of the women in this sample, only one had remarried, and her marriage was arranged by her first husband. This pervasive sense of isolation and exclusion may explain the reactions noted in a group of solicitors when discussing their female clients. Most women wanted to reconcile even at late stages in the divorce. The worker for the Asian Women's Refuge said that few women left the refuges for an independent existence. Most wanted to gain leverage or empowerment to negotiate with their families for a better situation. The data suggest that women, especially, negotiated in situations in which they were relatively powerless, both to preserve their marriages, and to bring about changes in their husbands' behaviour. Only one participant used the language of personal change:

A woman is more than that. She needs love and affection and to be treated like a human being. I may not be brilliant and clever but now I have got somewhere. I've only now realised what I am capable of and what I can achieve. (F) 5, p5

The female participants thought that the same stigma does not attach to men who divorce, that men's chances of remarrying are far greater, and that they have more choice of setting up an alternative family.

Oh, there's no problem for the men. They can get married three or four times.

(F)

My brother has two children to a white girl outside marriage. My Mum's kept him at home. I think she always feels ashamed he never married, but it's

double standards. We say, “our brother must have a separate God he is answerable to!” (F) 8, p.8

It’s never a problem for the man. They’ve got the support of the family. (F) 8, p.9

Women also perceive that men’s behaviour, violence, failure to support, and adultery, is not met with the communal disapproval that they expect.

A common practice for Asian men who are unhappy in their marriages is to leave their wives in the traditional role, and to have affairs, often with white women. (Advice worker, C).

It is easier for men. God, if the woman had an affair, that would be it! (F) 8, p.9

The mosque would not intervene to stop him. The Koran says they should, but they don’t want to. (F) 6, p.10

No one from the mosque would say what was right and what was wrong in this situation; women are left alone. (F) 2, p.8

Due to the relatively small number of men in the sample, the data on men’s experience of divorce are much less extensive. The community interviews suggest that there is awareness that the experience of Asian men is unheard.

Men suffer enormously in divorce, great shame is attached to it, and there are few services for them. My brother became very depressed and wouldn’t talk to

anyone in the family. But his wife recovered quite quickly. (Female advice worker,C.)

I see many young men who are as unhappy with arranged marriages as the women, and they try to negotiate around them while keeping their families intact. (Female youth worker, C.)

Male clients here do not talk as easily to female Asian workers as women do. (Female volunteer at Bradford Contact Centre, C.)

Many young men are very troubled, and receiving little or no help. (Education advice worker, C.)

Most men find it difficult to talk about their feelings. I recently saw two young Asian men, and they couldn't for the life of them describe what the problems were. (Solicitor, Fo.)

Of the male participants in the research, all recalled serious emotional disturbance at the time of their divorce. One, who was raised until adolescence in Pakistan, said:

For a Pathan, divorce is especially shameful. They will poke the finger at men and say, "It is not a good thing". Squabbling affects the heart and mind. Men can't talk about it, but I opened my heart to my best friend and he makes me understand. Not many men will talk. It is very shameful and awkward to talk about the divorce word. (M) 1, p.7

I have missed all their growing up. I said to S (the centre advice worker) “I wish some one would go to her and find out what really happened. I am still on medication. For three months I stayed at home, and did not see or speak to any one, I felt so degraded. I came here and talked to S. and that helped. (M) 2, p.6/7 .

I spoke to M, the imam who sent you to me, and he gave me advice and help. When I met my second wife’s family, they were asking, “Will he do it (divorce) again?” Then they met my parents, and heard that I had been depressed and on tablets, and had stopped working. (M) 3, p.6

None of these men felt that they had received the support and help from their families that they had expected. All had remarried, but only one had made his own choice in the second marriage. The others had returned to Pakistan for an arranged marriage to another family member. One of the community leaders, whose marriage to a British- born Muslim girl had failed, had accepted the offer by his aunt in Pakistan to arrange a marriage to a girl chosen by her. The limitations of the data in this area must be acknowledged, notably the small sample of male participants and the fact that much of the information on gendered community attitudes to male behaviour come from women. This very small sample suggests that for men the experience of divorce can be an isolating and painful one, but it does not allow the research to make a significant contribution to gendered theories of individual identity and structural expectations of behaviour. However the accounts of the lived experiences of divorce show that they are profoundly affected by cultural assumptions.

It is not apparent whether the sense of 'shame' is the same for men as for women. Reimann (2001b) noted that for men, shame often relates to anger that they no longer exercise control in a situation in which they had expected to do so. Once the divorce is achieved, the data suggest that it is easier for men to remarry. The same moral condemnation does not seem to apply to male behaviour in marriage and after divorce, but the overwhelming contribution to this conclusion comes from women. It is clear that for mediators in divorce conflict in this ethnic group, the tentative conclusions from the data are important. The lived experience of marriage and divorce are profoundly constructed from cultural assumptions, and are heavily gender-specific. There are also cultural variations between British-born Muslims of Pakistani origin, and those born and raised in Pakistan. There are strong indications that a 'marriage-saving' agenda may be brought to the negotiations, especially by women. The mediation process would need to acknowledge that men and women come to the process with divergent views about the process of divorce, and of its implications for their lives after it.

3. Indigenous methods of conflict resolution

Central to this thesis is an exploration of indigenous methods of conflict resolution, and the congruence between these methods and those developed in Euro/North American models of mediation. The data show how divorce disputes are managed in the Pakistani Muslim community in Bradford. This is divided into two separate processes for description and discussion. They are: attempts at resolution *within the family*, and attempts at resolution *outside the family*.

Intra-family resolution attempts

The data analysed so far have shown the embedded nature of marriage in the family, kinship and economic structure of this community. The hypothesis is made that the 'arrangers' would be intensely involved if there were indications that the marriage was in difficulties. The data show how they are involved, what they do, how effective they are, and how their intervention is seen by those who were the object of their intervention. It must be acknowledged that all those interviewed were, by definition, individuals for whom the process had failed. I had no interviews with participants for whom it was successful, although one participant did speak favourably of the robust and thoughtful advice given by an imam to her sister, when her marriage was in difficulties.

The data are substantially balanced by the interviews with professional workers whose experience gave them key insights into these processes. The data suggest distinctly gendered narratives of conflict and how it was resolved. It is a common, if unexamined, explanation for the low take-up of mediation services by ethnic minorities, that each community 'looks after its own', and that they have well-developed systems of social support that answer the needs of that community. The following comments given in the community interviews suggest that there is a system of conflict 'resolution' during divorce, with distinctive characteristics that are revealed in the data.

The first attempt is always to keep it in the family. Then involve the extended family, and finally the "clan" or "biraderi". Families are reluctant to seek outside help. (Secretary of the Council for Mosques, C)

They will turn to their own families first. Going to outsiders is seen as a betrayal which would humiliate the family, and leave the woman more isolated.

(Contact centre worker, C)

The first mediation which takes place in the family is by a representative of the man and of the woman, but they are not mediators, more oppressors”.

(Head of the Muslim College, London, C)

I see many disputes about the granting of a divorce and about residence and contact for children. They are not necessarily resolved in the community.

(Advice worker, Kirklees MDC, C)

These comments indicate that the first processes of dispute resolution take place in the family, and that an attempt to take it outside is actively discouraged. The data show how the participants experienced the process, and what their retrospective views of it were. They also suggest that the ‘arrangers’ speedily became involved, but not as mediators, more as ‘enforcers’, and that the strategies for evading this process were limited, both for men and for women. The participants describe responses that were almost universally aimed at ensuring that the marriage continued.

If you do it, you will do it on your own. We will disown you. (M) 3, p.2

Nobody wanted to know. (M) 3, p.2

My brother said, “You’ve got to make it work, you can’t do this”. (F) 2, p.5

The family knew I was unhappy, but your parents arrange a marriage and you’ve got to make it work. (F) 2, p.4

Two young women found themselves in marriages where they were effectively domestic servants in homes with a large extended family, and where the mother-in-law was perceived as very dominant. When the problems were made apparent, visits from the wife's family or other outsiders were rebuffed. Both developed serious depression.

I was suffocating in that marriage, in that house. I knew it would end, but didn't know when. In the end it was my family who helped but it was entirely them."

(F) 5, p.6

They said they were professional women. "Who do you think you are you are not even educated?" His dad said, "This is what you'll get if you try to get out. This is it. If you step out of this house, you're finished." They wouldn't let any one into the house; that was the problem. (F) 6, p.7.

The family was very keen to give advice, especially my brother. "You should do this or that". (F) 7, p.3

My father used to tell us of a saying, "A wife comes to her husband in her wedding clothes and leaves him in a shroud". (F) 10, p.9

I said to my family, "Help me". But they said, "We don't want to be seen as trouble causers, as marriage wreckers. We don't want to be labelled as that.

(M) 3, p.2

When it was obvious that the situation was becoming serious, different family members, became involved. Some from Pakistan, and sometimes from other countries. If there was violence, then brothers often took a leading role in confronting it.

My mum is his aunty, so she came down and tried to sort things out. Then my brother-in-law and my sister, and another brother who's a cousin of his. (F) 1,p 5

Once my uncle came from America, just to get us back together. He did! They do it for their name's sake. There was nobody to say "How are you coping? Are you alright? (F) 1, p7

My family tried to stop him but he still kept hitting me. I felt quite betrayed because they could have done more and my brothers could have given him one as well. He said, "Even your brothers don't care, they just tell me off". They did care really, but if they were firm with him, and said, "You touch my sister again and we'll break your legs," it might have toned him down a bit. (F) 4, p 9

Her father and brother came from France and pressurised me. My father and brothers took my side and it didn't help. (M) 2, p.3

This same participant had been accused by his father-in-law of being violent in the marriage (which he denied). He recounted how, even believing this, they had put pressure on her to return.

They threatened her that she should stick with the marriage. My father-in-law, my father, my brother-in-law and sisters said “You have to take her back”. My mother-in-law, who is my aunt, blackmailed emotionally, cried and said how much I would be doing for my mum. They said, “You have to get her back. Our dignity is at stake if she comes back and says you do not want her. (M) 2, p.4

The Asian community and her family let her know she had degraded them. (M) 2, p.5

They didn't side with anyone, really. It was just their own self respect, their reputation. It was for the marriage to work. The bottom line was their reputation because it would go down the tube. All my brothers and sisters had arranged marriages, and they were working well. (M) 3, p.4

A very common pattern was for the wife to return to her parents when the situation became too much or when she wanted to demonstrate how difficult the marriage had become. Community workers stressed that this was a serious matter of family honour, and that women who access community resources will be blamed. All these women spoke of intense pressure exerted on them to return home, even when there was known violence.

I kept leaving, so I was seen as the one who was trying to end the marriage. Even if he had done it, I was always persuaded to go back. (F) 4, p.10

There was great pressure on me to go home. Even tho' my mum had seen the violence, they didn't want it ending up in divorce. They think it is just a misunderstanding, pressure of life, it'll calm down. Seven times I went back to him, seven times. (F) 1, p.7

I left and went to my mum and dad's. My brother took me back again, and said, "You've got to make it work. You can't do this. (F) 2, p.5

My uncle came over from America and took me back. Not that I wanted to, not after the knife incident, I was very frightened. (F) 1, p.7

Me dad were in Pakistan, and he'd heard. It had even got as far as Pakistan that I had left him! He came back and said, "Just for me. The shame on the family of you doing this. Think of me. I'm your dad. (F) 2, p.5

The intervention of the family at this stage was experienced by the participants as coercive, and with no sense of concern for them as individuals.

I wanted someone to help me, to advise me, to reassure me. Some one who could tell me what is available. (F) 2, p.6

I felt so degraded, but I came to this centre and it helped. (M) 2, p.7

It hurts my heart very much. It is very painful, even if the marriage is unhappy. (M) 1, p.7

I would have loved a mediator. I think there needs to be two types, one a non Muslim who is detached from the situation and one who won't make value judgements, and will know where I am coming from. A Muslim mediator would do that. (F) 7, p.6

I dropped from 11 to 9 stones. I smoked like a chimney, 50 a day. No one helped me; I needed support from the family. There was none, and that was the painful part, I had to bear everything myself. (M) 3, p.5

However, only one of the participants had severed all ties with her family of origin and many were grateful for the support they had eventually gained from their families after the separation. Some talk of covert support for their actions.

I'd been with me mum and dad for a year, then I ended up in a flat ... I wanted a place of my own. They didn't like the idea, but I got them round to it and they said, "Alright, so long as you live close by". (F) 2, p.7

A lot of Mum's generation say, "It's so easy nowadays, you can just leave them". They had to put up with a lot more and stayed. (F) 4, p.19

A lot of mum's generation are sympathetic because they say, "Good riddance". Things my mum can't say because she's my mum. (F) 4, p.20

My family's views have changed a lot. After I came back here, they never thought that would happen to me, because I was such a good little girl. Now

they are pushing my sisters off into education. And they have stood by me while I went to college and got a job. My dad always helps and picks up the children from school. I couldn't have done it without my parents. (F) 5, p.8

He, my brother supports me living here. They know he is the one as has done wrong. We've isolated ourselves. (F) 6, p.14

My dad is 80 and my mum is in her 60's. They came to my second wedding and there was no bitterness, because my first wife had remarried. They think it is a disgrace for the family, but they *have* moved. My mum rings me every day, and if I don't go down she does my head in! Oh, yes. We are still close. (M) 3, p.6

The data suggest that the conflicts described here turn on notions of identity and on the relationship between the participants, how they perceive it and what their expectations are of each other. The conflicts follow from the subjective beliefs and values of the two parties, and of the family and kinship system in which the relationship is embedded. In terms of Galtung's triangle, only the behavioural element of the conflict is addressed by the traditional methods of conflict resolution, often with coercive methods, and aiming at a suppression of the conflict. The meaning attached to the conflict is derived from the value system of the intervenors, and rarely addresses the feelings or the values of the parties. The participants' values are not necessarily a rejection of the values of the elder generation, and are themselves derived from gendered meanings attached to marriage and family roles. The overall conclusion that can be

drawn from this data, and that is backed by the community interviews, is that the traditional methods of family support and dispute resolution are failing to meet the complex marital and family issues present in this community. These derive from changes across generation, and from conflicts arising out of differences of culture that may accompany trans-national marriages.

Extra-family resolution attempts

The assumption that there are in this community, effective processes for resolving conflict in divorce, is contradicted by the data. The data show that once the family system, with its distinctive values, has failed to resolve the issue, parties tend to use the law rather than any established extra-legal processes. Men and women use the mosque and other sources of help and support in different ways.

When I left, I went to a priest in Bradford. They think that Islam is more for the man than the woman. They said to me, "What you are doing is wrong. Go back. Because your husband does not deprive you of money or clothes, or physically beat you up, you should go back. He is a good man".

(F) 5, p.6

Two women had more positive experiences, both from outside the city.

My sister directed me to a particular imam in Leeds. I rang him and explained my position. He said my husband had treated me very wrongly, and that I should consider my children and ask him to move out for a time.

(F) 7, p.6

An example is my sister-in-law, who came over from Bangladesh to marry here. She refused to go to live with her husband despite great pressure from

her mother-in-law. After mediation, the imam recommended that she and the man move out and live together alone. The mother-in-law was furious!

(Advice worker, Keighley (C))

The men tend to approach the mosque for advice and to involve the imams and elders in the dispute.

I asked the imam. I tell it to them as I am telling it to you. The imam said, "If we were you, in your place, we would not forgive her, the things she did."

(M) 1, p.4

I asked a lot of people at the mosque. They are more religious than I am and they knew about the religious aspects of it. They said, "There are certain ways of getting an Islamic divorce." (M) 3, p.2

The women who had experience of attempts by the mosque to try to resolve the dispute, found it either partial, or unwilling to address their concerns. Some would not consider approaching imams, because of assumptions about how they would react:

A lot of people came from the mosque (after incidents of violence), and said, "Look, he's sorry for what he's done." He had approached some one at the mosque. Then some one came to talk to me dad, because we can't go in front of men, you see. (F) 2, p.6

What the elders say is, "You've got to do that". What ever is written in the Koran, when it comes down to it, the woman's not allowed to do anything. Just take whatever she is given. (F) 2, p.6

We're left alone, we don't have any one to support us. (F) 2, p.8

I wanted some one to help me, advise me, reassure me. There is nothing, just the family, and at the end of the day even my family were all for him.

(F) 2, p.6

The following quotation was in answer to a question about whether the participant had considered going to the mosque for support, when she had money problems after the divorce.

I don't think they would want to get involved. The Koran says they should do that, but they don't want to do it. They say, "It's for the family." (F) 2, p.8

"Nobody in the community said anything or tried to sort things out. Nobody was there for our family. (F) 6, p.14

Would I have gone to the mosque? Good Lord, no. They'd have turned me out. Probably imposed more control on me. It's their views about how women should be and how women should live. (F) 8, p. 5

People from the community don't get involved; it's all a myth. I was completely unsupported. (F) 8, p.6

The imam I went to was completely uneducated, and was only interested in getting me to preserve the marriage. (F) 9, p.1

The community interviews confirmed this data about the limitations of processes of dispute resolution in the community.

Imams may have had a community role in Pakistan, but they do not have such a role here. Often they lack the skills and do not want to be involved in marital disputes. (Member of Council for Mosques, C)

They may invite an imam to mediate, but this is very rare. It is more about exhortation (same source).

Disputes are resolved in the family. Imams are rarely used due to their level of education, and their lack of acceptability. (Community link worker, Health Services, C)

Imams have no understanding of the demands of modern society and give no leadership. (Immigration advice worker, C)

Several solicitors, who saw clients only after divorce proceedings had been initiated, had experience of their clients' experience of informal conflict resolution.

They will use the family as the first source of help to resolve problems, then they prefer to go to the courts. (Solicitor, Fo)

An imam has to watch his position. If he says something that his community or mosque don't want to hear, he'll be sacked. I'll give you an example. An imam came to negotiate the contract for my sister to sign for the marriage, in case of divorce. He said, "You're entitled to half anyway, so there's no

point in discussing it". My family said, "Yes! Put that down". But the men in the room said, "*What* did he say?" You see, he gave the Islamic perspective, not the cultural one. It was brave of him. (Solicitor, Fo)

One of my clients was told by a local community leader, in Bradford, that she did not have the right to start divorce proceedings. This man at the Sharia Council in London gave her the right information, and told her to go back to them and tell them to "get a grip". I was surprised!" (solicitor, Fo.)

The last two quotations are significant in that they show emerging from the data, what is a clear strategy for some women and to some extent for some men. This is to make a clear distinction between cultural norms, and Islamic principles that govern family life. From these principles, they developed ideas of what they needed now or, in retrospect, needed then.

They've got religion and culture mixed up. They use culture as religion and it's not. Women have rights in Islam, but culture has totally destroyed that. They have no rights. I sorted out for myself what's right and what's wrong. When I grew up I had all culture and no religion. (F) 5, p.1

We had established routines of learning the Koran and prayer, and that has helped me a lot in life. If those had been neglected, as with most families here, then it causes problems with identity. I never had this, not as a Pakistani, nor as a Muslim. No conflict and no confusion. (F) 10, p.2

I know that some girls have told me that their mothers and fathers have told them that if they divorce, God will not see them on Judgement Day. I was horrified. It is culture, not religion. I read the Koran, and I looked up the references to divorce. I have listened to scholars; there are many interpretations. (F) 10, p. 8/9

Our family, they are a very religious family, but when religion and culture come into it, it's two very different things. (M) 3, p.1

Did you see the programme, "Divorce, Iranian style"? What an eye opener! There was this woman in the divorce settlement, saying, "Ten grand, that's what you agreed". The Pakistani men here didn't want to know about it. Forget the gifts and the Islamic values. (Solicitor, Fo)

Some of us have fought that battle in our families. We've said, "Why don't we put Muslim values first instead of Indian sub-continent ones?" If you can use that, and argue from it, why not? (Female advice worker, Fo)

It's taken my mother ages to understand, and to let go of some of the traditions, but you start to educate them. It's a fine balance, to break down the barriers. (Advice worker, Fo)

For some participants, the appeal to Islamic principles was strengthened by access to advice from the Sharia Council in London. The Council gives women advice about divorce, about mediation, and about procedures for obtaining a divorce if their husbands

are unwilling to grant one. They are perceived by the participants (only two from this sample) and by local solicitors as offering informed and liberal advice for women, but based on an understanding of Islamic family law, and Islamic values. The advice workers recommended women who suffered from domestic violence to approach them, warning that:

If the leaders know that you go to W or K ... (both well known matrimonial law firms in Bradford), and that you would be referred to the Sharia Council, they would say, "Don't use them". All these myths would come out. It's fear. (Advice worker, Fo)

These data show that most participants saw clearly that cultural values pervaded the definition of the divorce conflict, and therefore what means were appropriate for its resolution. Some, but not all, used the Koran to challenge these powerful and long-established discourses. Some said they had no religious views, and based their resistance on a different gender identity.

Me and my friend, we've always been looking in loads of places for help and support. We're tried setting up our own group. (F) 2, p.8.

There was no appreciation. I learned that I deserved respect as a human being and as a woman. You don't see yourself, I really thought it was in my head! (F) 5, p.4

Because I am a woman, it does not mean that I am less than any one else, especially an Asian woman. I couldn't speak my mind when I was younger. I've only now realised what I am capable of. (F) 5, p.7

I survived by courage. (F) 8, p.8

What an Asian man has to say is irrelevant. I don't have to listen. (F) 8, p.10

These accounts of participants' experience of conflict resolution processes in their community, and the inner processes that enabled them to survive and make sense of the experience, bear out Knott and Khokher's conclusions about the process of adaptation among young Muslim women in Bradford. The young women whom they interviewed adopted a strategy of adaptation through Islam. They reject the religion of their parents, which they see as based on tradition, and articulate a more religious faith, using their education in England to explore what they see as outdated and narrow interpretations of Islam. Informed women advice workers said that, in their experience, women of South Asian origin did not want to pay what they see as the devastating price of breaking with their families. Even those who went to refuges, after suffering domestic violence, almost always went home. The workers felt that police and workers in helping agencies, who typically saw the solution to a violent or coercive family situation as one of separating the family from the individual, had been slow to understand this. The implication for mediators in divorce conflicts is that participants in their resolution will be informed by newly articulated religious beliefs that have changed between second and third generations of immigration. The local research by Knott and Khokher was conducted entirely with young women, and it may be that this religious reappraisal is a gendered experience. There is not sufficient evidence in the data to contribute to this debate.

In the context of these data it is useful to reflect at this point whether Beck's and Giddens' theories of marriage are useful in understanding the aspect of social behaviour as described by the participants. The data do suggest that these young men and women were not using the language of 'confluent marriage'. Marriage for them is not 'a pure relationship' nor one in which 'external criteria are dissolved' (Giddens 1991:5). It is still anchored in kinship, social duty and obligation. Beck's theory of 'reflexivity' is useful in explaining some aspects of the marriage experience narrated in the data. In the semi-private world of marriage, individuals construct their own biographies. The participants in this research were facing structural changes that were different in many respects from those that their parents had dealt with. The demands of immigration law, access to educational and employment opportunities, the stresses of cross-cultural marriages, and the challenges of a society that is religiously and ethnically hostile, contribute to opportunity and change within the private world of the family. 'The private sphere is becoming reflexive and political' (Beck 1986:109).

The resolution processes described here are, with few exceptions, experienced as coercive and gendered, operating from a particular view of women's roles. These assumptions are, as discussed in Chapter 3, based on contested interpretations of Islamic law. These discussions are emerging from the grass-roots experience of members of this community, and traditional assumptions are challenged. If, as Lederach argued, we respect and build on local and traditional approaches to conflict resolution, are we thereby privileging culture over gender? The themes that are starting to emerge from these data, are a serious challenge to the prevailing model of mediation, and are yielding 'embedded criteria' by which the usefulness of conflict resolution theories and practice will later be discussed.

4. Structure and agency: how structural factors influence the choices made in marriage and divorce.

First, this section explores what the data reveal about access to resources of information and financial independence, and how this affects the participants' choices in marriage and divorce. Stereotypical views of gender roles, power structures that reinforce those roles, and individual sense of gender identity, will be explored. It then examines how access to information and community resources, access to money and property, and cultural expectations about the disposal of children after divorce, impact on the conflict and the relative power of the participants in the disputes.

Access to information about the law, and to advice and other community services

The data show that for most of these participants, there was often limited access to information about the legal aspects of divorce. There was widespread confusion among participants and some professionals about the status of the *nikah* and of its relation to the civil marriage. Most of the participants, but not all, had civil ceremonies as well as the religious one. But among the community interviews there was evidence that there were cultural attitudes to the importance of the civil ceremony.

I had a religious ceremony at the home, with witnesses from the mosque, but no legal ceremony. It would be seen a suspicious if a woman wanted a civil ceremony. (Female advice worker, C)

I advise couples not to register as a civil marriage. The Islamic contract, if properly drawn up, is simple and clear. (Imam, C)

Shah-Kazemi (2001) found, from the sample of divorcing women who used the Sharia Council, that out of 287 cases a significant 57% of women did not register their marriages in the UK according to civil law. Some of these *nikah* ceremonies took place overseas, and would therefore be recognised as valid here, but 27% of those where the *nikah* took place in the UK did not go on to register their marriages. This means that these men and women did not acquire valid marriage status according to UK law. Solicitors were at pains to advise their clients about their disadvantaged position in regard to benefits, and saw the difficulties as being particularly severe for women who came here from Pakistan with no knowledge of the benefit system. The comments of the solicitors show their awareness of the ways in which the marriage contract is governed by cultural considerations.

There was evidence that the participants generally had little knowledge of Islamic law, and, perhaps more surprisingly, neither had their legal advisers. Carroll (1997) believed that the erroneous assumption that Muslim women have no right to divorce is widespread in society, and has even informed debates in Parliament. She argued that this assumption has to be comprehensively challenged. This assumption was evident from many of the interviews.

I discovered that my husband had another wife. I waited three years to divorce him before I discovered that I *could* divorce him. (Female advice worker, C)

Women don't know about the grounds for divorce, or even that they can. Women need to be able to access knowledge about the law. (Advice worker, Fo)

It is not only men who lack this knowledge. An imam said that men still use the bare *talaq*, (the simple pronunciation of a verbal formula), and were in ignorance about how much this was frowned upon in Islamic law. This is obviously an instance where ignorance works in favour of the participant. Shah-Kazemi (2001) found in her research that the users of the Sharia Council had often encountered not only ethnic English solicitors but also Muslim solicitors who did not understand the principles of Sharia Law. Some had given erroneous advice about the validity of their client's Islamic marriage in relation to English civil law, and the clients had had their position explained only when they approached the Sharia Council.

Once it was clear that the family and community resources had failed to resolve problems in the marriage, all the participants in this research used solicitors and court-based services to resolve the disputes. None used a solicitor from their own community, and they did not see this as important. One felt that she incurred the same blame as for using other advice services.

It was terrible. When he got the papers for the injunction, served on him, he didn't understand because he thought it was the divorce papers. He went round telling everyone. The extended family just descended on me... They said, "Don't go to court". (F) 4, p.13

There is evidence from the data of the importance that the men and women attached to access to informed and neutral advice, but which had sensitivity to cultural and religious norms. One felt that she had virtually been a prisoner in the matrimonial home until she started to go to a day centre.

I came across so many Asian women who had so many problems, even worse than me. Some didn't speak English. I was totally astonished. I had not realised what was happening outside the house. It wasn't just me. (F) 5, p.4

I was trapped and had nowhere to turn. Where were the support services I so desperately needed? Why was nobody offering me a helping hand to answer my questions and alleviate my fears? Nobody understood my anguish and my feeling of guilt I had brought on my family and community by leaving home. (Female survivor of domestic violence speaking at a conference in Bradford, 1998).

There is evidence that the importance of access to independent advice, and its impact on the power relationships in the marriage, is well understood. One participant, remembering her own isolation, tried to set up a group for divorced women. When she approached the local Asian community centre, she was told that they did not want to jeopardise their acceptance in the community by giving her a room. Two community workers spoke of the obstruction, open hostility and interference that they had encountered from local community leaders, when they set up support services for Asian women. Shah-Kazemi's (2001) research focused on the limitations of the advice and support agencies for women who experience domestic violence. The data on which this research was based also highlights the deficiencies in advisory services for men, and the difficulties they have in using them. Four out of five men in this research experienced physical and emotional symptoms that indicate depression. They used GP services, yet the local advice workers acknowledged the need of men for further support. Husain and O'Brien (1999) found it to be characteristic of male Muslims, that they did not engage in

surveys and research which would reveal the nature of their needs and experiences in a changing society. Plainly this has to be seen in the context of the difficulty of engaging men of ethnic UK origin, in managing their physical and emotional health.

Issues of finance and property in divorce conflicts

The data on which this section is based are relatively slight. I did not directly approach questions of finance and property, since I had been warned that these, and issues of sexuality, were particularly sensitive for this community. However, as the centrality to the research of issues of gender and of power became increasingly apparent, it is introduced here. It is a subject that merits further research, but in the interim the data is supplemented by secondary sources, and particularly by the research of Shah-Kazemi (2001), which gives valuable added insights into the financial arrangements arrived at in the divorces in her survey group.

The data yields information, often given in answer to other questions, about how finance and property was organised at three key stages of marriage:

- At the time of the *nikah* and the marriage contract
- During the marriage, particularly relating to the husband's contribution, and the provision, if any, for the extended family
- At the time of the break-up

Other than the data from the community interviews referring to cultural assumptions which pervade the contract entered into at the *nikah*, there is little additional information from the data. Some participants referred to the difficulties they encountered in retrieving the *mahr* after the divorce. There are data about the management of the domestic finances during the marriage and about the extended family's involvement.

Well, I was working in the nursery and he wouldn't let me work. Yes, he stopped me working after a while. We couldn't manage because he didn't have a full time job. He didn't realise there were bills and a mortgage to pay. (F) 1, p. 3

We had the mortgage ... he was sending money home, and he wasn't paying the bills. The reason was because the house was in my name, and he didn't want to pay anything. (F) 2, p. 3

He was all for his family in Pakistan. We were getting bills for the house and he wasn't interested in paying them. He was more interested in sending money back to his parents, saying they were poor. I managed for me and the kids on Family Allowance. We were always arguing about him not paying the bills. (F) 2, p. 3/4

I bought a property when we first got married ... I transferred it to joint names when we got married. Not the best of moves. When I stopped working, he had to take over all the bills and everything, and started to control everything. (F) 4, p. 7/8

In the household were two of his brothers, two sisters, mother, father, grandfather, grandmother, a grandchild and us. I was working before marriage but his mother said she wanted me at home. They all worked except me and the father. (F) 6, p. 5

It was their house and their furniture, none of it was mine. His wages went straight to his mum and she gave me £10 a week. After I had my son, I had the family allowance as well. (F) 6, p.7/8

We moved into our house but he went to his mum's every night after work. He'd put a lot of money into them, bought a house for them. (F) 8, p.4

One woman, who had a professional job, and whose husband came from Pakistan with no qualifications, described herself as having financial control.

For three years I didn't let him work, then he took a bakery job just to get out of the house. I didn't want him with a factory mentality, the level of talk, the "Sun", the level of Muslims. (F) 10, p. 7

I got both divorces, in English law and through the Sharia Council. I had to go to law for the furniture and clothes. I've applied to the CSA but I've heard nothing". (F).

I got nothing at the end. By then he'd lost his job so there was no maintenance and the house went through the solicitors but it wasn't worth taking over. So I got nothing. Women always lose out. We can get a divorce but no maintenance, no share in equity. There are plenty of us and we are all in the same boat. I've tried the CSA many times but he says he's on a low income or not working. One clever thing they do is to mortgage the house so that when it's sold, there's nothing over. It's clever, very clever.

It's all finding out how to do things. I live on Child benefit and Income Support. (F) 2, p. 7/8/9

He wouldn't budge, so while he was away I applied to CSA. He strung it out as long as he could and when they sent it to me I was appalled. He had increased the mortgage payments so he could pay less maintenance. (F) 7, p.7

He doesn't pay much maintenance because he says he's reduced his hours. He said, "Why did you go to the CSA?" I said, "It's because you have a duty financially. (F) 4, pp. 14 and 16

He's got a business...they have a house, two garages. I've got nothing. They cut up my clothes, even kept my TV and radio. The court said I could not prove they were mine. He said he had nothing because his mum put everything in his brother's name. (F) 6, p.12

I just let it go in the end. After a couple of years I bought my own house. (F) 8, p. 6

There is some evidence from the data, therefore, to suggest that Muslim women seem to find it hard to get a fair share of equity and maintenance after divorce. The focus group confirmed and clarified some of these findings.

Clients come and say, "Islam says this". But getting the gold back won't squeeze into English law, and they don't understand this. (Solicitor, Fo)

Women will say, "I'm entitled to this gold", but it's not part of English law, there's a conflict. So you have to try some sort of informal mediation, like the mosque. (Solicitor, Fo)

When I try to help women get back their own possessions and property, I have received threats and abuse from Asian men, one was a councillor. (Community worker, C)

Some of the participants felt that their rights to property and maintenance had not been adequately protected by the law, and that they had received inadequate advice from their solicitors. The solicitors themselves were aware of professional dilemmas in their work with both male and female clients.

It is difficult with Pakistani couples because they won't make a decision, because it is a family decision. You find the couple won't have any control, because they didn't have any control from the beginning. (Solicitor, Fo)

More than any other group, you find women are reluctant to make a decision until they have referred it back to their mum or uncle. They will say, "Can I be seen to get an English divorce?"; even if there are plenty of grounds. All you can say is, "I have to follow your instructions". But you wonder, how much control does any woman have? It can happen to an Asian male as well. (Solicitor, Fo)

There is a big issue of power imbalance. How do bring the weaker party up? So often an Asian client, particularly a woman will say, 'What do you think I should do?' (Solicitor, Fo)

There has been considerable debate on the issue of whether women's rights are better protected through formal representation than in informal negotiation procedures. (Abel 1982) argued that law can be a force for social change (for example: laws on racial equality, or on employment rights for women), but that as a weapon for the powerless it has its limitations (it cannot change the attitudes that lie behind determined efforts to evade or dilute these laws). These comments by solicitors indicate that they encounter the same dilemmas of power imbalance, and gender and culture issues that influence the process and outcomes of conflict resolution. Research on client satisfaction among ethnic minority users of legal services, comparable to that carried out by Davis and Roberts (1988), would contribute a valuable dimension to a discussion of the most effective "place" for the just settlement of disputes in asymmetric conflicts. Many of these comments show a diversity of household arrangements that could be true of ethnic UK marriages.

A different perspective was explored by Afshar (1989) in research that looked at three-generation households in the Pakistani Muslim communities in West Yorkshire. She found that the majority of second and third generation women had little formal education, and many had come over to work for a husband or relative, often where the entire family ran the family business. An increasing number are involved in home-working, with its very low rates of pay. Afshar argued that in the area of employment ethnicity makes for a different degree of exploitation, which she called, quoting Stivens (1985), 'the moral economy of kin' (1989:222). There is a strong sense of familial

obligation shared by all members of the household, with all contributing their labour and income to the family. The notions of private ownership and individual right to material goods are subordinated to the general well-being of the family, and members do not own individual items. Women's jewellery was the first to be pawned in times of crisis, and women saw employment as secondary to their roles as mothers and child-bearers. Afshar argued that in this respect there is an element of ideology and ethnicity which plays a part in creating a 'sub-class, and an even more inferior gender role, defined in terms of race and ideology' (1998:224).

Within the sample on which these data are based we can see that the women who had been educated to tertiary level were more successful in retaining a measure of financial control during the marriage, and had more avenues open to them after divorce. The data about the financial arrangements after the ending of the marriage showed that the women suffered a consistent degree of impoverishment. The discussion in Chapter 3, of the permissive nature of Islamic family law relating to men's financial obligations, and of the difficulties presented to English law by the traditional ways of owning property, contribute to an understanding of this.

Scimecca, argued for a conceptualisation of conflict resolution as a process contributing to social change rather than to social control. He stated that

What is crucial for understanding social behaviour is the degree to which people are in a position to control others, and how this is related to the accumulation of wealth, power and status (1987:31).

These data, on the differential access to information, support and financial independence by men and women in this community, suggest another 'embedded criterion' by which the choice of conflict resolution method is to be judged and its outcome evaluated. They

indicate strongly that these disputes are asymmetrical and raise issues for the mediator about the scope of the mediation process where differences of power have to be addressed to ensure a fair outcome. Curle's (1971) and Lederach's (1995) models of how imbalance of power in conflict resolution might be addressed are explored in more detail in the final chapter.

Post divorce parenting: religious and cultural assumptions

Decisions about ending the marriage are made in the context of likely outcomes over the arrangements for the children of the relationship. The data give only tentative indications of the cultural and religious context in which these arrangements are made. The legal context, outlined in Chapter 3, contributes to this understanding, but the participants again indicated that in this area of family life, cultural rather than religious values were important.

In Islam the children belong to the father, because he is the breadwinner. Men are more favoured in Sharia law than in English law as regards the children (Imam, member of Council for Mosques, C)

In disputes over children there are Islamic principles to be considered. (Imam,C)

It's bizarre really. From an Islamic point of view, children should go to their fathers, but from a cultural point of view it is always the mother who is left holding the baby ... There isn't an equal role in our community about who looks after the children. They are seen to be the mother's responsibility. (F,7, p.7/8)

The effect on children of divorce may be different because the family gets more support by the community. (Community worker, C)

The assumptions about the father's role relating to his bread-winning capacity have to be considered in the light of the demographic data about the poor educational achievement and economic disadvantage of males in the Pakistani Muslim community. This and the tentative conclusions about the relative poverty of Muslim women after divorce, suggest that these structural factors may be contributing to instability in the post-divorce family.

None of the participants suggested that the issue of residence of the children was an issue. The disputes were about issues familiar to any family mediator, that is ensuring regularity of contact, establishing a mode of communication between the parents, preventing the conflict between the parents from affecting the children, and dealing with in-laws who are antagonistic to one parent. In one case, the key issue for the mother was safeguarding respect for Islamic values in the education of the children, given that the father had married an ethnic UK woman. The community interviews suggest that the problems raised by divorce are beginning to be recognised.

Sometimes the man will disappear, if he has a second wife and starts a new family. Or if he is guilty of abuse, knows he will not get residence, and fears he will be landed with maintenance. (Imam, C)

Muslim men often remarry and then have little part in the lives of the children of the first marriage. (Family advice worker, C)

There is emphasis on the care of the children, not necessarily on ensuring that they will have contact with both parents. There are often bitter battles about keeping the other parent out. There are no mechanisms for sorting this out, and people go to lawyers. (Male family advice worker, C)

Men can have a peripheral role in the family. After divorce, many have no contact with the children, and I see the results of this in the children I work with. If the mother comes from Pakistan she will be very unsupported. (Male worker, Child and Family unit, C)

These issues were not the prime focus of this research, and it is not possible to do more than indicate how post-divorce parenting is managed in this community, and how the assumptions may be different from those that inform the approach adopted in family mediation services. These data suggest, however, that there are gendered views about post-divorce parenting roles, and that the role of kin may be as important as in the ordering of the marriage. The four *hadiths* outlined above (Chapter 3) suggest that both parents and significant kin are, in the Sharia, seen as of continuing significance in post-divorce parenting.

5. Power structures and the resolution of disputes

The data have already demonstrated how the participants experienced the intervention of the family, of elders and of the mosques. For some individuals, their experiences had led them to articulate both a strong critique of those processes, and how they needed to change. Similar critiques have developed, in a more sophisticated way, from grass-roots

workers, who have experienced the way these discourses of power operate in the domain of the local political structure.

There is a strong perception among these workers that the community leaders speak for a particular view of what the Pakistani Muslim community in Bradford is, and what its problems and opportunities are. This view is seen as traditional, male-dominated, and failing to address or even acknowledge difficult issues in the community, particularly of violence against women and children, of the social and economic exclusion of a large proportion of its young men, and of the problems faced by Muslims in a multi-cultural society.

It is important to ask, “Who defines what the community is? Who speaks for it? What are its political norms?” (Lecturer, University of Bradford, C)

The male community elders are unrepresentative of the community. They represent the public face of the community. (Advice worker on immigration matters, C)

The mosques are not connecting to the community, not providing religious and moral boundaries. Especially they do not address the needs of young people. (Lecturer in theology, C)

Everyone has experience of leaders who just stroll in and are controlled by other Pakistanis in the community, or in their caste system, or in their

particular area of Pakistan. If an imam or leader says something they do not want to hear, he will be sacked. (Advice worker, C)

There was a perception that the community leaders were powerful not only in that they expounded a particular ideology of family and community life, but that they exercised power in encouraging or hindering the funding and development of particular community projects.

My experience of setting up and running services for abused women in Bradford is that the male Muslim councillors expect to control projects such as these. Some actually demand access to female users. (Manager and advice worker, Project for Refuge for Black and Asian women, C)

The mosques often have links with the police. (Family worker with young Asian men, C)

When young women try to leave home before a marriage, the family will use the *mashvara*. That means that the local mosque will call a meeting. Learned men will hear both sides of the story. (Solicitor and member for the council of Mosques, C)

I have had to develop domestic violence work with women and conceal it under the heading of advice work. I have received threats and abuse from men, especially when I try to help women to gain their property and possessions after divorce. They are useless at protecting women's rights. (Advice worker, Bradford, C)

I was put under pressure from a male colleague to put pressure on a woman to return to an abusive marriage. (Female advice worker, Keighley, C)

There are only two mosques in Bradford which allow women. The mosques are failing the young since they mostly offer only rote learning. (Lecturer in Theology, Bradford, C)

I know lots of projects where people have been interfered with by “the usual suspects”. They tend to be people who have worked in the voluntary sector for years. They command respect in their own community and also in mainstream politics as well, so they are in a brilliant position. If we want to take this (family mediation) further, our credibility would be questioned. But if we are strong and focussed we can achieve part of what we want to do. (Advice worker, Fo)

Some of my colleagues, Asian workers trying to start projects for women trying to flee violence, were harassed personally. People were coming to see their families to put pressure on them to try to get them to stop. (Advice worker, C)

These extracts show that there are voices that challenge the prevailing discourse. There are also indications that some of the leaders have become aware, since the riots of the summer of 2001, of the extent of social exclusion and disaffection among young Pakistani men.

I chose to work outside the mosque. I am not employed by them, and I work with those marginalised by society. I try to introduce them to a moderate form of Islam. (Imam, C)

There are many problems among Asian young men. The solution is education in the principles of Islam, but by muftis who understand the problems of young people. (Solicitor and member for the Council of Mosques, C)

A return to Islam is not the answer, it is too simplistic a response. (Advice worker with young Asian men, C)

The implications for introducing family mediation as a process relevant to divorce in this community were made explicit by several informants. They argued that family mediation could be seen as embodying values that ran counter to the prevailing discourse about gender, and to traditional values about family and community. Unless these powerful voices are acknowledged both during the mediation process and in setting up the service- provision, then the project would fail.

For mediation to be credible to women, you would have to be clear about your values and you would have to provide support throughout the mediation process. If you are perceived as being associated with the mosque, you would be seriously compromised in the eyes of users. (Female Refuge advice worker, C)

Couples would not go to the mosque or community leaders, they tend to turn to people like myself or my father. We are traditional Muslims, and we are also successful here. We are seen as impartial. (Female solicitor, C)

You have to remember that many come from a tribal society where there is no system of law to protect women. Law lies with the rich and powerful. (Head of Islamic centre, London, C)

Women must feel safe. If you collaborate with community leaders, they won't touch it. (Female advice worker, C)

Throughout the interviews there were oblique references both by participants and by community interviewees to the use of physical violence against both men and women, when they do not keep to accepted norms of behaviour. This method of enforcement was explored openly at a conference held in Bradford in 1998, on the issue of domestic violence in the Asian community (Thiara 1998). A worker from the Southall Sisters, a group formed in London in 1979 to raise awareness of the issue and to look at ways of helping women, spoke of their experiences. They were seen as pioneers in addressing an issue that was just being raised in Bradford among several agencies.

The women have tried all sorts of internal mechanisms for resolving disputes, the first among these being family elders to try to sort things out, and they never work because when one looks at the power imbalance in the families, the odds are stacked against women. What they are looking for is alternatives ... counselling to be able to overcome years of internalisation of social values,

custom and tradition, and to help them overcome the guilt and deep shame they feel.

Asian women's suicide rates in this country are three times the national average.

What culture does is not explain the violence, but why women are unable to get out of violent relationships...and why they cannot seek the ways of escape that other women can. We need to create spaces for women to get together and discuss how religion and culture affect our lives.

(Source: Pragna Patel, Southall Sisters. "Conference to examine service responses to Asian women experiencing violence - the way forward". Bradford 1997.)

The most striking and unexpected finding from the data was the extent to which structures of power pervade both the contexts in which the conflicts arose, and the processes of resolution. The data show how the discourses of power are translated into the real-life situations of the participants, and how they are both maintained and challenged. The data are explored in the context of Foucault's theorisation of power as the 'knowledge-producing apparatuses' which contribute to the definition of the conflict. In the analysis of the data, we can see how discourses of gender and of powerful traditional cultural values are voiced by mosques and by community leaders, and transmitted via the acceptance of religious and cultural norms in the family. These discourses are being challenged by groups who see themselves as disempowered.

The analysis of the data draws on Giddens' structuration theory, which allows for the importance of agency, the transformative power of individuals, and the possibility of 'making a difference'. We are led to consider the key questions posed by Habermas:

- How far are networks open in this society?

- How far is this community reflecting on its own circumstances?
- How can we ensure that previously marginalised voices are heard?

These questions are the most fundamentally challenging questions posed so far for the current theory and practice of family mediation. The data allows us to hear the lived realities of lives that are usually unheard, and gives as much importance to the dynamics of change at the grass-roots, as to those at the level of the power elite.

These striking examples of the power structures that pervade and define the disputes that are brought to the mediation process, demonstrate the inadequacy of a conceptualisation of power that addresses only interaction within the mediation session. If we accept the definition of conflict resolution as one that addresses behaviour, attitudes and structural violence, then the mediation project moves away from the relatively narrow settlement model. The empowerment of the grass-roots discussed by Lederach becomes not the uncritical acceptance of existing mechanisms, but respect for, and empowerment of, the alternative discourses evolving in the community. It requires the conflict resolution process to state clearly its values. If, as this research suggests, the counter-hegemonic discourses are largely female, conflict resolution has to address the issue of how it hears and empowers the voices of men, which are not heard clearly in this or other researches on the South Asian community. This is a crucial issue for family mediation, since one of its core values is the empowerment of both parties, and in particular in their empowerment to continue in their roles of joint parents after divorce.

Ultimately we should want forums in which the full expression of how the conflict is felt and understood by both men and women, can be facilitated. (Stamato 1992:381).

6. Gender issues in the resolution of disputes

This research did not begin with a focus on gender, and therefore was neither framed and researched as a separate issue, nor were there specific questions about individual's perceptions of their gender roles. However as the interviews progressed the narratives revealed gendered perceptions of marriage and divorce conflict and of ways of resolving it. A key question began to emerge: 'How useful would gender, as an analytical category, prove to be in interpreting the data?'

Men and women are here heard talking about their perceptions of their own and their spouse's roles in marriage, of what they regard as acceptable role behaviour, and of differences of attitude between them and their parents' generation. They talk about attitudes to marriage and divorce in their community, and the differences they observe in the expectations for men and women. The 'taken for granted' behaviour that reveals gendered roles, even when they are not made explicit, are also apparent. This section gives only glimpses of the factors at play in the conflict situation, and at the cross-cutting issues such as the cultural context of gender and gender-appropriate behaviour. Reimann's three-fold definition of gender: individual gender identity, symbolism of gender, and structure of gender has already been summarised (Chapter 2). In this section, each gender dimension of gender as an analytical category is used to analyse the data.

Gender as individual identity

How do men and women see themselves in a given society? What ideas about men and women inform the process of conflict resolution?

Reimann argued (2001b) that most analyses of conflict resolution have worked with a static notion of identity, which has not taken into account the shifting identities of men

and women, and their often contradictory roles in conflict. Examples of women acting, in their roles of 'arrangers', in extremely coercive ways are heard in these narratives. Their aim, in the arranging of marriage and in the attempt to resolve difficulties during the marriage, is derived from gendered and traditional views of family roles, and the importance of *izzat*. Many women had contradictory identities in the conflicts: women who urged their daughters to return to often violent marriages, were very supportive to them when the marriage was over; one mother, who virtually forced her son to marry in Pakistan, enjoys close and almost daily contact with him since he has remarried. The narratives in this research revealed the experiences of men and women who accepted one set of definitions of their roles at the time of the marriage, but moved to another that allowed them to proceed to divorce:

A woman has to take what she is given (F) 8, p.4

The grandparents thought, "The wife is to obey and the husband is to order". Well, even there, in Pakistan, things have changed. (F) 1, p.11

We are not taught to speak our minds. I was very traditional then, very modest, never spoke unless spoken to. Then I learned I deserved respect as a woman. (F) 2, p. 2

I know we cannot have an absolute equal say in marriage because where can the final word come from? His duty to me was to treat me with kindness. (F) 6, p.7

My mother's ideas were completely different from my father's. He got caught in a time-warp of 20 to 30 years ago in Pakistan, and now it is completely different. (F) 10, p.1/2

I took a clerical job because I did not want to outshine him. To me, an Islamic marriage is one where the man is the dominant partner. The man is the head of the house and he takes responsibility. I was brought up like that and to me the concepts are still valid. It is the tradition that the man is the breadwinner. (F) 10, p.4

She does no cooking or washing for me. I do everything. When she is upstairs, I am downstairs. (M) 1, p. 4

My mother needed someone to look after her at that time, so I got married to another woman in Pakistan in Muslim law, and she looked after her. (M) 1, p. 2

She wanted half the property but under Islam she is not entitled to it. (M) 3, p.4

We were together for three years in a flat with my brother and sister-in-law. For three years I coped on my own, I didn't know where my next cup of tea was coming from ... I spent days without food. (M) 3, p. 3

The concept of individual gender identity allows analysis of the different ways in which men and women interpreted the impact on themselves of unhappy and sometimes violent marriages. It is possible to hypothesise about the underlying factors that drove them in some cases to violence against themselves and others, and in all cases to wrench themselves free of their marriages against all the weight of community disapproval. It allows speculation about social change, and about the links between structural factors such as access to employment, and advice services, and the formation and sustaining of individual concepts of identity. It appeared from the data that education and generation were important variables in this process, and that young women who were in professional jobs saw their family roles differently from women who had had no tertiary education.

Stamato (1992) suggested a number of variables under which gender differences may surface in the conflict situation, none of which are sufficiently researched, but which suggest directions for mediators when considering how the mediation process can be made gender-sensitive. They are: the context in which the conflict arises, the nature of the relations between the parties, the gender of the opposing party, the social status and perceived power of the parties, the expectations of the other party's behaviour, and the gender and status of the third party. Early research studies (Watson and Kesten (1989), and Watson (1991), suggested that the gendered experience of conflict is a complex one, and that the dynamics of disputes are affected by the weight of cultural constructions, and perceptions of self and others. In the informal methods described in this research, women are on occasions excluded from the resolution process, conducted by male elders on their behalf. Both male and female participants felt that the process provided for negotiation about them rather than with them. The challenge for a gender-

sensitive model of mediation is to evaluate in what forum culture and gender variables can safely emerge, and how gendered perceptions of third party roles affect the process of mediation. The importance of the gender perspective is that it focuses conflict theory on the importance of relationships which, as I shall argue later, is a key feature that distinguishes conflict resolution at international levels from that at domestic levels.

Gender symbolism

Notions of masculinity and of femininity are defined in a traditional way in this ethnic minority group. It may be that the reluctance of men to participate in this research (and in most surveys) is explained by stereotypical views of what is appropriate behaviour for men, how men see themselves, and how they deal with complex feelings of hurt and powerlessness. The powerful concept of *izzat* contains a strongly gendered view of what is appropriate behaviour, which acts as a powerful constraint upon women, but confers legitimacy on some aspects of men's behaviour. The concept of stereotypical views of masculinity and femininity may throw a light on male violence, as deriving not simply from individual characteristics and motivation, but as generated by symbolism and structure. It provides an approach to explain why it may be relatively hard to engage men from this community in mediation, and what may need to be considered in the gendered choice of mediator.

He was the man and had to provide. (F) 2, p. 4

He's not looking after me, not looking after the house, not looking after the children. That's what a man is supposed to do (F2, p.4)

My parents-in-law said that I should look after his (husband's) parents. They thought I could look after them while they were at work. (F) 6, p.5

He said, “ my mum said, that you are the closest thing to a woman from Pakistan”. It's because I dress not too westernised, I would cook and clean and do the housework. (F) 6, p. 13

The mosque has views about how women should be and how women should live. (F) 2, p. 6

I wanted to know; what was my role and what was his in Islam. (F.) 4, p.16

Men and women may bring different issues to mediation. For some of the women in this research the key issue was the need for respect. For one male participant, it was the need to make his first wife acknowledge her traditional responsibility in respect of his mother. The important issue for the mediator is that male and female issues are given equal importance, since it may be tempting for some issues to be ignored in negotiation. It may be possible for some gender-specific issues such as domestic violence and abuse to be hidden from public debate, and there is evidence that this is true in this community. The question for mediation would be: in what forum can these issues be safely raised, and how are gendered and cultural attitudes to be addressed? The gender of the third party, their status and power, whether insider or outsider, is crucial, and lies at the heart of what Reimann (2001b) called the 'culture/gender double bind'.

What is discussed and what is left out in the gender-neutral language of conflict resolution as theory and practice?... Does a “culture-sensitive” conflict resolution training... serve to de-politicise or privatise gender-specific dimensions of conflict, direct and structural violence? (2001b:15).

Shah-Kazemi (1996) argued that the appropriate mediators in ethnic minority disputes are the ‘natural helpers’ in the community. This suggestion needs to address the question of what gender and status the third party should be, that enables him or her to be effective in allowing these issues to emerge, and to engage both with the shifting concepts of self-identity, and with the stereotypical views of gender that pervade the traditional processes.

This raises troubling questions on the constant and uneasy tension of gender specific and culture specific dimensions of most local “indigenous conflict resolution (Reimann (2001b: 14).

Gender structure

The data placed the distribution of power, and its hidden nature, at the heart of the structural factors that constrained the perceptions and the choices of the participants in this research. This has already been explored under section 5, above. There is evidence that women are excluded from the local political structures, that influence decisions about the allocation of resources and the choice of community projects, and from the community fora in which community issues are aired. Local leadership is seen as working with often hidden agenda based on stereotypical views of gender.

I have received threats and abuse from Asian men, one a councillor, because of my work supporting abused women: especially when I take women to their houses to get their property after they have left. (Advice worker, C)

When I set up the refuge I found that men expected to control the project. Some councillors actually demanded access to the records! I told my line manager that I would soon see them off! (Advice worker, C)

There is also evidence of differential access between men and women into the worlds of paid employment outside the home, and to ownership of property and money. These structural factors plainly affected the ways in which men and women perceived their identity in relation to their partner in the home. Although it did not emerge clearly in this research, the work of Husain and O'Brien (1999) suggested that economic and social exclusion among young South Asian males has affected their role in the home.

A key question for mediation, is how far it can, or should address these gendered structural inequalities. It emerged from the data that Muslim women are involved at the grass-roots level in activities that challenge some of these inequalities. Such activities are setting up and running advice services, refuges, confidence building workshops, and conferences on issues such as domestic violence. It could be argued that this is because they are excluded at higher levels or because their family and community ties facilitate their effectiveness. Articulate and politically-aware arguments and policy plans were elicited mainly from women, but also from some male leaders. There is also evidence that when such women deviated too far from such traditional norms, or publicly engaged in work that raised sensitive issues, they or their families were threatened or pressured.

Thus constraining economic and structural forces are involved in the conflict situation, and in the maintenance of the settlement after it is resolved.

Most of the data in this research pertained to women's experiences, and the theorising about gender is built on a feminist perspective. The dilemma for family mediation is that by definition it aims at recognising the rights of men and women to have a continuing parental role after divorce, and therefore has traditionally seen its role as impartial. The analysis of gender in conflict begun here opens up for mediators hitherto under-theorised areas of changing gender identities, of social change, and of hierarchical power structures that play their part in maintaining stereotypical views of gender. It opens up a deeper understanding of the place of gender in conflict, but it also raises key dilemmas.

- How can family mediation, with its relatively narrow, time limited, settlement focus provide the space in which gender identities can be elicited and their contribution to the conflict evaluated?
- Does family mediation have a role in working with existing hierarchical power structures to bring about change? If we privilege culturally sensitive indigenous processes, how are women to gain access to processes that address their issues? What are the risks to the mediation process, and to women, of challenging or bypassing these processes?
- Where does family mediation locate itself in the tension between social change and empowerment, on the one hand, and social stability, on the other?

To summarise: the analysis of the data demonstrates that the concepts of culture, gender and power are of central importance in understanding how marriage and divorce are

experienced in this community, and how processes of conflict resolution operate in these divorce disputes. The task is now to develop a model of conflict resolution that allows us to address these issues in a sensitive and effective way. After analysis of the data from the Ismaili study, this model will be developed in the concluding chapter.

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CHAPTER FIVE

Cross-Cultural Training: a case study of a training programme in family and commercial mediation for members of the world-wide community of Ismaili Muslims.

Introduction

This second case study differs fundamentally from the case study undertaken in Bradford. In the Ismaili case study the role of the researcher was that of the observer and there was not the same opportunity to control the scope of the questions, to interrogate the data and to test its reliability by reference to secondary sources.

This chapter introduces data from the observation of a training course in family and commercial mediation offered to a Muslim faith community that differs in significant ways from the Pakistani Muslim community in Bradford. It is not a comparable study of indigenous ways of resolving conflict during divorce in a religious and ethnic minority. Rather it begins at the point where the data on Bradford end. It examines how far a 'western' model of mediation proved to be helpful to a particular religious group, coming from different cultures and communities, and how it might be adapted to these dimensions of difference. The data provide a source of comparison of the ways in which similar issues are addressed in two strikingly different communities.

I was asked by National Family Mediation (NFM) if I would act as consultant to a two-week training programme in family and commercial mediation which they, and the Centre for Commercial Mediation (CEDR), had been asked to deliver to a group of Ismaili Muslims, in August 2001. The participants, heads and members of national and local Conciliation and Arbitration Boards (CAB's, see below), came from Ismaili communities

in the USA, Canada, the UK, France, Portugal, Tanzania, Kenya, Uganda, India and Pakistan. After negotiation it was agreed with the Ismaili Centre that I would attend all the programme, apart from the commercial training, including the introductory weekend which was for the Ismaili CAB members and contained input by Ismaili lawyers and scholars from the Institute of Ismaili Studies and elsewhere. In his opening speech, Keshavjee, from the Institute of Ismaili Studies summarised their expectation of the training programme as follows. 'From us you will get these attributes, a multiplicity of traditions...roots deeply embedded in our heritage, while our branches are in the contemporary world. From you we seek state of the art training in the principles of dispute resolution'. My role in the training programme was the dual one of providing feedback for NFM and gathering data for my research. The latter was to be submitted for approval to the Institute of Ismaili Studies, before publication.

This training programme promised to offer a unique opportunity of observing how a training programme, which was devised mainly for mediators in England and Wales, would be received by participants from a different religion and different cultures and how it could be suitably modified. The training agency wanted feedback on its training methods, especially its implications for cross-cultural training. For me as a researcher, it was directly relevant to the central issues in the research and a core issue in conflict resolution theory and practice. 'Can conflict resolution be made more culturally sensitive, enriched by neglected insights and traditions from other cultures, or is it relevant only to western cultures?' (Miall et al 1999:62).

The data were gathered in the following ways:

- Observation of the training programme, analysing the content of the programme and its training methods.

- Acting as 'coach' in the role-play sessions. Joining informal small group discussions outside the main programme.
- Analysis of the feedback from participants at the end of the training programme, both verbal and by written evaluation.
- Follow-up, one year later, of the experience of Ismaili mediators in delivering the NFM programme to the local CAB members in their communities world-wide.

Ideally this follow-up would have been the observation of a programme delivered in the Indian sub-continent, but time and financial constraints did not allow for this proposal to be made. However, feedback was obtained via a discussion with the organiser of the original training programme who also oversaw the subsequent international programmes, and with an experienced female Ismaili CAB member from London. In the discussions, the two colleagues reflected on the NFM training programme, on its positive features and on the areas where change was thought to be necessary.

This training was the first such internal training for the Ismaili CAB members, and provided a unique opportunity for non-Ismaili trainers and the researcher to explore some of the central issues in this research. The majority of the communities from which CAB members attended this course are minorities in non-Islamic states. To this extent their concerns are similar to those of some members of the Muslim Pakistani community in Bradford. They are re-examining Islamic practice in the area of divorce and separation in countries where the majority values are very different. The Ismaili community, in organising this programme, was acknowledging the need for re-appraisal of their distinctive ways of resolving disputes during divorce and separation. In asking for the NFM training

programme, they were seeking access to skills, techniques and models of mediation that could be adapted in the Ismaili faith communities world-wide, with their own histories and embedded values. Essentially they were seeking skills and approaches that would be compatible with their own principles and systems of conflict resolution. The feedback to the training, and the subsequent discussion of how it was implemented in their world-wide training, provides valuable data with which to support or challenge Lederach's critiques of western models of mediation, and approaches to training, (see Chapter 2). It allows exploration of whether there are generic principles that can be applied across cultures. It also provides a possible way forward in thinking how a Muslim community can develop a method of conflict resolution using a western model, but which is culturally and religiously sensitive. This experience could be shared with other Muslim minority communities.

This chapter comprises the following themes:

- The Ismaili Community: a brief historical overview, and an exploration of its distinctive religious and organisational features.
- The NFM training programme: an analysis of its content and training methods, using Lederach's (1995) theoretical and practical frameworks relating to training.
- The feedback: analysis of the feedback from the participants, verbal and written, during and at the end of the training.
- The follow-up: how these debates have developed and been addressed during the subsequent training programmes.

1. The Ismaili Community

A major Shi-ite Muslim community, the Ismailis have a long and complex history dating back to the formative period of Islam from the seventh to the ninth centuries. For the

purposes of this chapter, probably the most relevant period is that of the permanent settlement in India of the Imam, the first Aga Khan, in the early nineteenth century. From here, he defined the particular religious identity of the Ismailis, following centuries of dispersal and adaptation to local and dominant customs and religions. In 1866, the Shia-Ismailis, with the Aga Khan as their acknowledged religious head, were legally established in British India. Daftary (1998) argued that this initiates the modern period of this community, and that it was due to the modernising policies of the first Imams that they have emerged as an educated and prosperous community. They are now the second largest Shi-ite Muslim community, scattered as religious minorities in more than twenty-five countries in Asia, Africa, North America and Europe and Central Asia.

A succession of innovative and vigorous leaders have contributed to the distinctive organisational features of this community, and to their unusual contributions in the fields of education, health, and third-world social and economic development. In 1861 the first Aga Khan circulated documents requiring a pledge of loyalty to the Imam and to the Ismaili faith as interpreted by him, 'a landmark in asserting the ... Ismaili identity' (Daftary 1998:198). The Aga Khan exerted control of the local communities (*jamats*) by personally appointing the officers, (*mukhi*), the social and religious heads, and their assistants (*kamadia*). This system continues to this day, and each official has clearly defined duties, including the collection of religious dues and presiding over religious ceremonies. The second Aga Khan concentrated on improving the educational and welfare standards of the Ismailis. During the long leadership of the third Aga Khan (1885 to 1957), the prolonged programme designed to establish Ismailis as a modern Muslim community with high standards of education, health and social well-being was begun. 'He responded to a rapidly-changing world and made it possible for his followers in different countries to live

in the twentieth century as a progressive community with a distinct Islamic identity' (Daftary 1998:206).

In the first Constitution of 1905 he issued a set of rules that governed the normal life of the community, especially as regards marriage, divorce and inheritance. A distinctive feature of this constitution is the involvement of the communities with the national leadership and the emphasis on voluntary office holding. The Imamate of the third Aga Khan affirmed the importance of education in the development of the person.

The role of the intellect has always played an important part in the Ismaili interpretation of Islam and has remained a major pillar of Ismaili thought since the first (tenth) Century. (Keshavjee, speech to the chairs of CABs in Texas, 2001).

The third Aga Khan was succeeded by his grandson, the present and fourth Aga Khan. The mediation training programme should be seen in the context of his substantial development of social and welfare initiatives in third world countries, and his awareness of the demands and dilemmas of Islamic minorities in modern states. In 1983 he set up a committee to oversee all the institutions of the Ismaili community³. This committee consisted mainly of lawyers and elders from India, Pakistan and East Africa as well as personnel from their own national secretariats who had experience of dealing with community issues. One segment of this review addressed issues of conflict resolution in the community, and asked questions such as:

What should be the role of those who deal with conflict resolution issues?

What is the role of the religious boards?

What is the role of the Health and Social Boards?

³ I am indebted for this information to Mohamed Kashevjee, of the Ismaili Centre who was a member of this committee.

The committee visited every country, and made recommendations about restructuring the various constitutions. In 1986, the fourth Aga Khan promulgated the first global Constitution for Ismaili Muslims. This re-affirmed the teachings of Islam and the role of the hereditary Imam in funding both the social and the spiritual governance of the community, operative initially in fourteen (now seventeen) regions of the world where Ismaili Muslims are particularly concentrated. He restructured existing institutions into the Aga Khan Development Network, with the purpose of developing cultural, social and educational projects in Africa and Asia. At the same time he continues to encourage young Ismailis to maintain a balance in spiritual and worldly life, which is a cardinal principle of Ismaili theology, and to acquire education to allow them to survive in the world of the twenty-first century. A particular innovation was the setting up of the national Conciliation and Arbitration Boards (CABs), that in themselves were built on the existing mediation tribunals in East Africa. It was the members of these boards, all personally appointed by the Aga Khan, who came to the training programme analysed in this chapter.

The CAB's were seen as taking over some of the responsibility for conciliation from the early tribunals and *mukhis*, who still play a role in mediation. The Constitution also examined the role of the religious education Boards who are responsible for the role of lay preachers, *wazeen*, who develop the faith of the *jamat* through preaching. Their authority is derived from the religious Boards appointed by the Imam, and they receive training in spiritual wisdom and environmental issues. They are responsible for the transmission of the faith. The initiative in training the CAB members in mediation was seen as a way of embracing western skills in family mediation, but also of giving central importance to its location in the context of Islamic values. It was seen as important that Muslims evaluate their position in relation to concepts such as; the difference between

freedom and license, between individualism and the importance given to relationships, and sanctity versus publicity in family matters.

In the area of religious tradition and understanding of Islamic law, the Ismailis see themselves as adopting a distinctive position which enables them to engage constructively with western thought. Ruthven, in a lecture delivered as part of the weekend introduction to the training, and entitled 'Movements and currents in Islamic history' argued that the present upheaval in the Islamic world is comparable to that of reformation Europe. He characterised one thread in Islam as comparable to that of fundamentalism in the southern states of the USA. Faced with the challenges of a pluralistic world, some Muslims, and Christians, have gone down the legalistic route, and have sought in the Sharia, or the Bible, an authoritative source of guidance on issues such as male/female relationships. He contrasted this with the Ismaili interpretation of tradition as one that has to take place in the light of modern circumstances. This allows a progressive and liberal tradition to develop, and allows it to reach out to, and engage with non-religious discourses. The position adopted in this debate affects how Muslims engage with the challenges of living in modern western societies. The growing familiarity of Muslims with feminist and human rights principles means that laws affecting women, and those of Islamic provenance, are increasingly evaluated in terms of their conformity with these values; different Muslim states have developed different responses.

Coulson (1969) argued that changes in the substance of Sharia family law in the previous decades have been of great social significance:

The status of women has been immeasurably improved ... for example, by safeguarding their position during marriage by allowing them to stipulate special

terms or conditions in the marriage contract ... by granting them the right to petition for divorce if the husband is guilty of a matrimonial offence. (1969:97).

He examined the ways in which states where Muslims are in the majority have developed laws that reflect new concepts of family ties and responsibilities. He concluded:

Muslim jurisprudence today is squarely facing the task of regulating the needs and aspirations of human life. The attitude of detached idealism which dominated the science of the Sharia law in the past is gone for ever. (1969:116).

In this context, by giving the hereditary Imam the final authority in the interpretation and elaboration of the law, Ismaili jurisprudence similarly has the ability to be responsive to different contexts and different needs, yet to remain faithful to Islamic tradition.

The CAB members who attended this course were of different cultural backgrounds, and the introductory weekend was an attempt to help them locate themselves in their own religious, cultural and secular/legal traditions. The concepts of law and of conflict resolution contained implicit values that were divergent from those on which the training programme was based. Conflict resolution was defined in the Islamic tradition as 'aiming for the best interests of society and of the family, rather than for individual rights'. In a lecture on the ethics of ADR in Islam, Nanji used the metaphor of paradise and of the Islamic garden to illustrate its significance. The aims of conflict resolution were expressed in terms such as 'bringing the parties back to a state of harmony', and 'building a moral community'. The end result of conflict resolution in Islam is the restoration of the harmony of paradise, hence the metaphor of the garden as a visualisation of paradise. It was of interest to the researcher, as an outsider, that this speaker, whose lecture was full of symbolism and metaphor, received the only standing ovation of the weekend. One

participant said of this lecture, 'By poetry and metaphor, you have introduced me to a new way of thinking about my role ... you have helped me to understand from where we come'. In the same lecture, Nanji introduced a metaphor for the role of the judge in Islamic law, which contrasts with that which pervades western justice. A judge is seen not as blind, and thus the embodiment of impartial justice, but as one who can use his social position to bring people back into social harmony. Lederach (1995) argued that language and metaphor are extremely important in the understanding of conflict in different cultures. In the course of training in CR in Central America he began to collect words and phrases which were used to describe conflict, and would often start the training by eliciting lists of such phrases from the participants. He argued that these metaphors 'can be used as tools for analysis in intervention and consulting' (1995:76).

This brief overview indicates the ways in which the Ismaili community is attempting to address key issues in the lives of Muslims living as minority groups. Such issues are: the effectiveness of traditional methods of conflict resolution in the communities and how far they are governed by Islamic values; the tension between cultural and religious values, and those of modern western societies; how the faith is preached, and what kind of support is needed for religious leaders develop a credible and relevant approach to their communities. The data gathered in the Bradford case study indicate that some of the interviewees, especially those who hold leading professional positions in the community, share these concerns.

The Ismaili community emerges from this overview as one which is distinctive in many respects, and particularly in the nature of its leadership. The strong authority of the hereditary Imam means that the needs of the community can be analysed and explored and appropriate solutions implemented, with guidance from the Imam, yet in consultation with

the community. This feature is not present in the non-Ismaili Muslim communities in Britain. Leadership within the local communities is contested, and the communities themselves are divided on lines which reflect their communities of origin. It also emerges from this study that there appears to be more consensus about the Koranic basis of conflict resolution, and of its central importance in the building of the community, among the Ismaili Muslims than there is in Bradford. This serves to underline the importance of culture in approaching conflict resolution, even within the Muslim diaspora. This apparent consensus may be due to the fact that all the Ismailis involved in the case study were arbitrators, and some were trained mediators in their own countries. In Bradford, in contrast, I did not speak to any community member who saw himself as a mediator, or who could refer me to anyone who was. Leadership emerged from the data as a contested issue in the Bradford Muslim community.

Ismailis adopt a distinctive intellectual and theological position, which enables them to engage freely with innovative ways of combining Islam with the demands of living in the modern world. This is in contrast to the different theological and intellectual approaches characteristic of the British Muslim community in Bradford that were discussed in Chapter 3. These areas of convergence and divergence will be considered in the discussion of the relevance to the minority Muslim communities in Britain of the evolving Ismaili model of mediation.

2. The NFM training

The training programme lasted for fourteen days. The first two were organised by the Ismaili Institute and were essentially an orientation for the participants, placing ADR in its Islamic context and giving an introduction to Islamic history and law. The key themes of these sessions have already been summarised. The first day of the programme was

organised by NFM and CEDR jointly, and introduced the programme. This was followed by six days of training by NFM, using a condensed version of their Core Training Programme which is the standard training offered to all potential mediators in NFM services. Following three days' training by CEDR, there was a joint day of evaluation, followed by a one-day conference, entitled 'Strengthening the Community' which was attended by outside speakers. The programme was delivered by three NFM trainers, all ethnic UK, with additional 'coaches' for the role-play sessions. All these were mediators from ethnic minority groups, mainly Afro-Caribbean and South Asian.

As researcher, I was present for the entire programme, apart from the three days organised by CEDR. As participant observer I was able to focus on informal discussions on issues of relevance to the research, and as coach in the role-play sessions, I was also able to observe how the participants characteristically worked as mediators, and how they tried to integrate the model to which they were introduced. I did not have access to the discussions between the participants when they re-focussed daily on the core issues of the training and their appropriateness for the community.

There were thirty-one participants of whom eight were women. Twenty came from Europe and North America, one each from India, Pakistan and Uganda, four from Kenya and three from Tanzania. The common language was English, but several languages from the Indian sub-continent were used in informal discussions. All were chairs or members of their national CABs, many were lawyers, one was a High Court Judge, one the Chair of the Canadian Immigration Appeal Board and all were individuals of local standing. They had been appointed by the Aga Khan for a fixed term of three years, renewable for a further three. All were voluntary workers.

At the beginning of the training, participants were asked to share common expectations of the course. Many expressed concerns about the process and the difficulties they had experienced in engaging users, dealing with impasses, managing high levels of conflict, and balancing power in the session. There were also issues of values and of identity.

‘How do we inculcate charity of heart?’

‘How do we help our clients to transform to a higher self?’

‘How do we deal with behaviour that derives not from religion but from culture?’

‘How do we incorporate in the process the need for reconciliation?’

‘Do arbitrators who are connected with the parties obtain a better outcome? How do they deal with pressures from the family?’

One CAB mediator from New York, in informal discussion, made a distinction between his work as a New York City community mediator, and his different approach as an Ismaili mediator. In the latter function he knew the clients, and he had a clear role in promoting and saving the marriage.

During the training, the content addressed practice issues. The model of mediation was presented as universal and applicable to all cultures, with the staged model of negotiation as defined by Gulliver (1979) at the heart of the process. To repeat briefly, these eight stages of the negotiation process are as follows: the search for the arena, agenda formulation, exploring the field, narrowing differences, preliminaries to the final bargaining, final bargaining, ritual affirmation, and the execution of the agreement. The method of teaching was essentially that of input from trainers, followed by role-plays and small-group discussion. Videos were used, all the subjects being ethnic UK mediators and ‘clients’, and they were located in the UK legal and social context. When cultural and religious issues were raised at the beginning of the training, these were re-defined explicitly

in this context as relegated to the 'special needs' category along with language and disability issues.

Analysis of the training

In applying the various elements of Lederach's model to the NFM training, and in attempting to locate it within his framework, it has to be stated at the outset that NFM had not then developed a theory of training that underpinned its training programmes. The conclusions that are drawn about the training rest on observation of the content and method of delivery of the programme, and inferences are made on this basis.

Lederach (1995) argued that it is crucial to develop a theoretical and practical framework relating to training and culture. He defined three models that inform his educational approach and integrates them into a 'framework for empowerment'. These are:

- The 'popular education' model developed by Paulo Freire (1970) which sees people and their understanding as the key resource in learning. The trainer/educator works mutually with the trainee/learner on problems relating to real life.
- The 'appropriate technology' model. The educator discovers and uses resources that are available and local rather than introducing new and elaborate technology.
- The 'ethnographic' model. The educator uses the insights of the ethnographic approach, so that we understand an action through the eyes of those who live it. This approach empowers learners and fosters awareness.

Lederach distinguished between 'explicit knowledge', which is highly valued, and 'implicit knowledge', which is part of the learners' lives and which is least valued. He argued that the ethnographic mind-set inculcates enormous respect for people in a given setting, and pays careful attention to everyday talk, and meanings that are 'taken for granted'.

The NFM training contained some elements of the approach that worked with participants on their real lives, but overall the local contexts in which divorce disputes were rooted were given low priority. The assumption was made by NFM that adjustments to take account of culture would be made by the participants outside the training and in informal groups. The Ismaili organiser of the training had arranged for this to be supplemented by inputs from scholars such as Ruthven, Ballantyne and Hinchcliffe, who encouraged the theoretical links with Islamic processes. Lederach's key question for educators was: 'How do we foster a training approach which respects and empowers people to understand and create models for working with conflict in their own context?'

Lederach's models of training

In defining models of training Lederach identified two ideal types: the 'prescriptive' and the 'elicitative'. The prescriptive model sees the trainer as the key resource, or expert, who shows the trainees 'how to do it'. The key assumption is that the goal of training is to 'learn the model', and emphasis is placed on techniques of training. Culture is seen as an 'area for advanced training'. The elicitative model is at the other end of the spectrum and aims to discover and to clarify models that arise from a particular setting. The trainer's approach is facilitative. S/he adopts a perspective of ignorance, helps the participants to discuss real-life situations and from there to develop explicit knowledge. They develop confidence that enables them to evaluate what works, and how far experience in one setting may transfer to another. Lederach acknowledged a creative tension between these two approaches, each having strengths and weaknesses. He argued that mainstream CR training is much closer to the prescriptive end of the spectrum, and that the question should be asked whether the training is aimed at delivering techniques or at empowering and

transforming. The questions about the aims of mediation training mirror those about the aims of mediation itself.

Each model gives a different significance to the role and place of culture. The prescriptive model is based on the assumption of universality, that the techniques are culturally neutral, and that participants need only learn the basic model, its techniques and components. These can then be adapted to their own culture. Culture becomes an 'area of technique', and the cultural assumptions of the offered model are rarely recognised. The elicitive approach, however, understands culture as "seedbed and as a foundation" (1995:65), and the training and the model building will be rooted in these.

In a discussion that is particularly relevant to this training, and to trainers in the UK who are working in a multi-cultural society, Lederach asked a key question: Is an elicitive strategy applicable to a multi-cultural setting, where participants live in an urban setting that has removed or distanced them from traditional ways of dealing with conflict? In many European and North American cities, migrant communities are in the process of change; social resources for dealing with conflict are no longer available, or are no longer acceptable as they were in the country of origin. The Ismailis acknowledge this development, and address it partly through the regular readings in the *jamat* of the Imam's teachings. Lederach argued that an elicitive approach could invite participants to reflect on what used to exist, on what was done in the home context, and on what is still present, or now missing in their current context. From these reflections they could develop a model of what would be useful to them now, in their present situation. This strategy could involve identifying who are the current peacemakers in any community, and empowering the participants to take charge of developing an approach that is rooted in their culture.

Reference will be made later to criticisms of this process that may be made from a feminist viewpoint.

In locating the NFM training process in relation to Lederach's models, my observation suggested that it was towards the prescriptive end of the spectrum. The model of family mediation was presented as one that was universally applicable, and participants were invited to make their own adjustments for their own cultural context. At no stage was the model located in its historical and cultural context, and the embedded values of the Euro/North American model were not made explicit. In fairness to NFM and to CEDR, the training brief was that the Ismaili Institute wanted its CAB members to be trained in the skills of family and commercial mediation which could be seen as culturally impartial, such as listening, engaging, and power balancing. These could be used to develop uniformity of practice in all their communities. The positive outcomes of this approach will be discussed later, since the discussion so far has highlighted only its fundamental limitations.

Lederach's four dimensions of training design

Having established the principles that inform training in conflict resolution, Lederach suggested a framework for the design of the programme. He proposed four questions.

Firstly, *what is the purpose of the training?* Is it to sensitise those already trained to more subtle aspects of their work? Or to create a model from a particular cultural setting rather than to import one from outside that setting? In the Ismaili training, the purpose agreed before the training was to "import" the NFM and CEDR models, although the Ismailis had already made explicit that they had established models of conflict resolution, based on Islam.

Secondly, *who is the target audience?* Lederach argued that it is usually an 'Anglo' audience (ethnic UK in the English context). At the other end of the spectrum it could be a

fully indigenous population with non-English language and non-English roots. The middle ground is a target group of different ethnic and linguistic background, often so-called ethnic minorities. The target group for the training under discussion fell into none of these categories. It was a group with a common, explicit religious and value base, with several languages in common use. However the participants were of different nationalities with different cultures and legal systems, and they themselves were of different settlement generations within these communities.

Thirdly, *what is the type of conflict* that the training wishes to examine? The conflicts for this group were those of marriage and relationship breakdown and commercial disputes.

The participants were dealing with conflicts in different minority cultures, but they also dealt with cross-cultural conflicts where one party was not Ismaili.

Finally, *what is the preferred approach* in the spectrum between prescriptive and elicitive? The NFM training has already been located towards the prescriptive end of the spectrum, but it does not seem to have been as the result of a reasoned or principled approach. Rather there was an implicit, taken-for-granted, assumption about the universal applicability of the training, and of the mediation model that it offered.

Lederach's typology of approaches to training

Lederach suggested that it is useful to analyse the approaches used in the training of conflict resolution in culturally diverse settings, and discussed the strengths and weaknesses of each of the four approaches.

One approach is to 'sensitise a mediator'. It aims at introducing culture to those already trained. It focuses on broad cross-cultural issues, particularly communication. Its strength is that it raises mediator awareness, and its weakness is that it can reduce training to broad generalisations and quick techniques.

Another is to 'adopt a process'. The mediation model is presented as a model to be criticised, adapted and changed to meet the unique qualities of a particular culture. The method is comparison rather than prescription, and trainers participate in moulding the model. The strength of this approach is the open recognition that any model of conflict resolution has cultural premises and limitations. The weakness is that it does not fit neatly into short training courses, and requires considerable flexibility and follow-up as adaptations are explored.

The 'inclusive' approach retains the basic model of mediation, but participants come from different backgrounds and the purpose of the training is to begin a new mediation project within this culturally diverse setting. Its strength is that it reaches out to diverse groups. Its weakness is that the cultural implications embedded in the mainstream model are rarely teased out, and participants are taught to proceed like 'dominant culture' mediators.

Finally, the 'create a model' approach is crucially different from the other three, in that it assumes that the work will be in different settings, and does not present a preconceived model. Rather it works with the participants' own knowledge of their cultures, and of their values and existing methods of conflict resolution. Its strength is the implicit recognition of indigenous cultural knowledge, and the creation of a model from their own expertise. Its weakness is that it requires a long-term approach. Participants may resist if they want immediate answers.

The NFM training arguably adopted the 'inclusive' approach, and its fundamental weakness was that it did not make explicit the embedded differences in values that underlay the model.

To summarise: the argument is offered that, on this occasion, the NFM training aimed to import a model of mediation of universal applicability to a group of different

cultures, legal systems and settlement generation, but within a world-wide religious community. The training did not focus on specifically cultural issues, rather it focussed on introducing a group whose members had possibly allied expertise (such as law, management) to the mediation model practised in England. It was not explicitly presented as culturally located and the assumption was made that members would adapt it. The training was presented as facilitating a new mediation project in a culturally diverse setting and it was tacitly assumed that the participants would behave as 'dominant culture' mediators. There was neither explicit recognition of existing indigenous cultural processes of conflict resolution, nor an attempt to elicit what were the processes favoured in Islam.

This analysis of the training illuminates one of the main themes of this research. The question is raised of how the Ismaili arbitrators experienced this training and how useful it proved to be in their subsequent delivery of mediation training programmes to their communities world-wide. The exploration of this question may prove to have relevance to the members of the Pakistani community in Bradford who are considering how they may develop a model of mediation that is sensitive to their culture and religion.

The task for the researcher was now to gather data that showed the strengths, and when used, the weaknesses of this approach in a cross-cultural training event.

3. The feedback: evaluation by participants

Informal discussions

These data were gathered during the course of conversations with participants outside the sessions, or by making notes of concerns raised during the feedback to the training sessions, and were recorded immediately. The conversations were analysed by themes, which tend to relate to those developed in the core training programme.

The role of the mediator The issue of the different view of the role of the mediator in the Ismaili community was repeatedly raised. S/he is not 'outsider neutral' but is often known by both parties as a respected member of the community. S/he shares its religious values, and is invested with authority to embody the community's values in enforcing the mediation process. This was seen by many participants as enabling them to be proactive and to speed up the process. They began to question the appropriateness for them of the 'impartial' mediator, and to discuss whether impartiality was even possible. They also acknowledged cultural differences within the group in this area. Significant differences emerged between the North American mediators and those from the Indian sub-continent.

Assumptions about the autonomy of the individual in decision-making In discussions about domestic violence, many thought that their prior knowledge, via community links, of the existence of violence and abuse, required a different approach from that taken in the training programme. The 'intake' procedures and the screening for domestic violence would take a different form, given these differences in prior knowledge. The importance of the wider family, and the kinship network was raised in this context, but also in relation to their role in resolving and upholding the resolution of disputes. One participant particularly asked for a model of mediation that could work with the wider family in a way that acknowledged its central importance.

Embedded values and their place in the mediation process A key issue for this group was the importance attached to the saving of marriages, a focus that is given low priority in mediation theory and practice in the UK. The chair of one CAB board said that up to 40% of their mediation clients achieved reconciliation, and there was much internal debate on this issue. One member said that she continued to look for reconciliation throughout the mediation process. A North American mediator felt that his role was to promote marriage

yet realised that 'culturally our young people are American'. A Canadian mediator thought that in moving mediation from the responsibility of the *mukhis*, who still have a key role in saving marriages, they were actually introducing an alien cultural value, that of reinforcing the autonomy of the married pair. At several points in the plenary sessions, and in the small role-play groups, participants were observed 'telling' the parties of the morality or immorality of their actions. A participant from the Indian subcontinent said, 'We see many cases (1500 per annum) relating to small issues, we mediate them all so that we can inculcate values at an early stage, of forgiveness and charity of heart. We aim for a moral community'. A different mediator from the Indian subcontinent adopted, in the role-plays, a moral and highly directive stance in mediation that he felt was appropriate. Other participants were clearly engaged in issues of balancing an authoritarian approach with a facilitative one, which empowered the parties. Several comments were made about the importance that they attached to the trainers being aware of the religious and ethical basis of their approach to ADR.

At different times questions were raised about the language used in mediation, and the place of feelings in the process. Lederach described this as 'the analytical and rational bias rather than the relational and the emotional'. One participant felt discomfort with the language used. She said, 'It is the language of the individual that is not so important to us'.

An issue that was hardly raised except in oblique ways was gender. The Ismailis perceive themselves as belonging to a tradition that gives women equal place with men, and the women to whom I spoke felt they were making progress towards equality. Two female arbitrators from North America privately expressed discomfort that the only female NFM trainer felt more comfortable in leading sessions while kneeling on the floor. They felt that this stance conveyed, in their culture, an attitude from which they were trying to move

away. It is an example of the significance attached to body language, and its different cultural interpretations.

Formal evaluation

On the last day of the training, participants were asked to reflect on their learning and to anticipate the challenges that awaited them on their return to their communities. This process was seen as being part of a process of 'cascade learning', which would be implemented with other CAB members. This feedback was discussed and written on flip charts. Many of these comments expressed anxieties about maintaining and developing new learning, but many were focussing on religious and cultural issues.

'How can we learn *not* to solve the problem, but to empower clients?'

'How can we educate the *jamat* to use us? What will be the dissonance between the *jamat's* expectation and the new CAB style of mediation?'

'What part of the "tool kit" does not apply to us?'

'How will we establish our status and credibility?'

'How can we work with diversity within the *jamat*?'

'How can we educate other CAB members in the mediation process?'

These comments tacitly acknowledged the established place in the *jamat* of the *mukhi*. His role is seen as stating the rights and wrongs of a dispute, and is one that members of the community still accept. One participant said that there is some resistance to the use of the CABs since they are seen as leading to divorce. The Ismailis are here engaging with some of the issues that are starting to surface in the Muslim community in Bradford. If the traditional ways of resolving disputes are no longer effective, what can replace them? Does professionalism necessarily confer greater credibility?

At the end of the programme, the participants were given an evaluation form so that NFM could evaluate the effectiveness of the training. This consisted of a survey of participants' views and observations, and 71% of the participants returned this questionnaire. There was also a separate survey of the trainers' views, and of the observations of the role-play coaches. Finally NFM asked for a report by the external observer (myself).

For NFM the overall feedback by the participants was highly positive. 100% found the programme well integrated, 87% found the content highly relevant, 61% found the programme stimulating. There was a high level of participants (96%) who found that the training had challenged and encouraged fresh thinking about how they practised.

Access to the final evaluation forms allowed me to make a more focussed evaluation of the experience of a cross-cultural training module. These verbatim comments communicated the debates and dilemmas that the training stimulated, while identifying what was useful and relevant.

'The trainers did not have a clue about the CABs, although progress was made'.

'The trainers did not understand that our first aim is reconciliation'.

'The model of the four stages of mediation was most useful. Probing, negotiation and exploring options were the common factors in the mediation and arbitration process I have used in my community for many years'.

'The course offered a model and a context and a map to identify the stages of mediation'.

'Identifying the principles of mediation, learning how to question and facilitate communication was most useful'.

'Do I work on reconciliation first, and give more time to the couple, or do I take their decision as final, culturally?'

'The trainers did not know about our culture, and the type of mediation we do as a community, but they were open to learning'.

'If our cultural background was more emphasised, it would have been more effective'.

Therefore the overall feedback from the participants both during and immediately after their training was that the model, principles and competencies taught during the course were both relevant and helpful to their existing work as arbitrators. Although cultural issues had not been consistently addressed, this did not seriously detract from the usefulness of the training. This was an unexpected finding. Lederach acknowledged that the elicitive approach, in its pure form, might miss some important cross-cultural contacts and fertilisation. People attend training precisely because they want to move beyond current practice, and they value exposure to different models, even if they are presented in a prescriptive way. Such cross-cultural exchanges are the richest and most beneficial ways in which people can grow. 'What is crucial in maintaining empowerment is a high view of participants being provided a voice and the power to evaluate and decide, which is ultimately rooted in their understanding of themselves and their own setting' (Lederach 1995:67). The Ismaili group was unusual in its awareness and articulation of the richness of its cultural heritage, and they initiated debates that the NFM trainers were perceptive enough to accept and develop.

4. One year later: the follow up

These follow-up data were gathered during a meeting with the member who had been responsible for co-ordinating the programme. He had also been responsible for organising subsequent training courses for Ismaili CAB members from various countries in family and commercial mediation, and had made a contribution to them. These training courses were run by one of the NFM trainers, in a private capacity, aided by CAB mediators from the original course. Also present at the meeting was a CAB member from London, who was one of these trainers.

Within the year since the first training course, the following courses in commercial and family mediation had been implemented with local CAB members: in India, with forty participants, in Pakistan with sixty, in East Africa with forty, in North America with eighty, in France with fifty, in Portugal with forty, and in Syria with forty. There had thus been a wealth of different cultural settings in which to deliver the programme. The meeting aimed to elicit how appropriate the model of mediation had proved to be, and what debates and re-definitions had developed. The discussion showed that in the follow-up training the Ismailis began the process of identifying a model both of mediation, and of mediation training that was appropriate for their culture. In the process they addressed some of the key critiques of the western model of mediation that have been outlined.

The training, as delivered in the countries listed above, started with a clear statement of Koranic principles and of the guidance given by the Aga Khan.

We looked at the Koranic principles of ADR and at the guidance from the Imam. Then we looked at our devotional literature, and at the daily life of the community, its daily encounters, insights and prayers, and asked ourselves: “From the daily worship and life, what informs conflict resolution, and how

can we take it forward?" These embedded values of the community have not been marginalised on the altar of teaching skills.

In our training programmes we start the first day with the Islamic dimension. In Damascus, last Sunday, I read out what the Imam said about ADR. He places it in the context of social reconstruction. How do you convert the dispute resolution process into a reconstruction process? How do you bring people back into a living community, so that they are meaningful members of society?

So, if you have a divorced woman, it does not mean that she falls on one side and no one cares for her. You rehabilitate him or her to play an important role without the unfortunate event becoming a stigma. The community has the obligation to make this happen, it will not happen automatically.

In Nairobi the training programme began with the Imam's guidance, the Koranic principles and the Hadith of the Prophet. We say that when you have conflict you must make sure that it is resolved not just for the individual but for the family as a whole. You must resolve your differences with compassion and tolerance, for Islam enjoins that those who are better off must look after those who are weak. Then the community translates that into programmatic action through the different portfolios, so that we can work to see that help is given where it is needed.

ADR should not just be a technical process, and alternative to the law. It must be something more. If people say, "We would rather pay for a lawyer", we say, "What are your values as a human being?"

The model of mediation which is developing in this community draws on the methods and principles of the NFM programme, and gives high priority to Islamic values that place a special emphasis on the marriage and the family within the structure of the community. It also has clear values, which are spiritually based, about the importance of compassion and forgiveness, and the care of those who are less fortunate. It is a view of society as organic, where individuals are vital parts of the whole, and where the whole may sometimes be more important than the individual. Mediation therefore has a clear value base, and is located in a pattern of social and economic structures which addresses the needs of the parties that are not met in isolation. These may be education, employment, and the acceptance in the community of the parties as divorced persons. Mediation, therefore, is one part of a helping process. This process begins with help to save the marriage. After the breakdown appears inevitable, the impartial, neutral and empowering process of mediation is invoked. Finally community support is given after the end of the marriage to ensure the integration of the divorced parties into the community. The experience of the Ismaili mediators was that the principles and competencies of the NFM training were valuable as relevant tools, and that their training programmes built on the process as defined in the training and found it universally applicable.

I found it fascinating, in our last programme in Pakistan. There were these guys coming in from the areas near China. They were talking about all the issues that are at the heart of the discourse of mediation in North America and Britain. Gender, power imbalances, and in a very sophisticated way. And

these were ordinary lawyers from the villages! I said to myself, “ADR is socially ensconced.

At the programme in Mumbai...the Bombay High Court Judge emphasised that ADR is not new to India, but rooted in the *Lok Adalat* system which is indigenous to the villages of India.

The CAB members of Kenya, Tanzania and Uganda met in Nairobi in 2001. The High Court Judge ... remembered with great fondness his association with the Ismaili Dispute Resolution system some forty years earlier.

(These last two quotations are taken from a paper called “Mediation gains a foothold”, delivered in 2002, at a CAB training event, by the CAB member who was part of this follow up discussion).

The Ismaili mediators have explicitly defined mediation as part of a social process of reconstruction, which is an established part of their community organisation. It is possible to argue that the mediation model, as it is being developed by the Ismaili community, contains elements both of the ‘transformation’ and ‘social justice’ stories analysed by Bush and Folger (1994). It aims at:

A change a change or refinement in the consciousness and character of individual human beings...and necessarily connotes individual moral development, although this kind of change will very likely lead to changes in social institutions as well. (1994:24).

Mediation, in Bush and Folger's view 'reallocates material benefits and burdens among groups ... this aim (is) encompassed within the concept of moral justice or fairness, and ... is the concern of the social justice story' (1994:24).

The approach to mediation described in this follow-up interview aims not only at a change of attitude and behaviour in the parties, but also at changing the wider attitudes in the community towards those who have acted in ways seen as socially unacceptable. In the discussion, it became clear that the Ismailis are tentatively moving towards defining a model of mediation that is useful not only to the Ismaili community, but also to Muslim minorities in the west, and particularly in Britain.

Muslim immigration to Britain from India and Pakistan did not come from the cities but from Sylhet, Mirpur and Jullundur. People from the backwoods of the third world coming to the metropolitan centres of Britain and face to face with massive acculturation processes. We are seeing people who cannot sustain the extended family but who want to be Islamic. What is it to be Islamic and to retain an identity in a cosmopolitan world?

The Ismaili community in Britain can make a contribution to mediation because our models have a richness. But we have to know what is happening on the ground in these communities. Any mediation provider must understand the stakeholders in the community; the imams, the associations, the women's associations, the help lines. We need to understand the community beyond the fact that they are Muslims. Where do they come from? What is the position of women? What is the extended family structure? What are they going through?

Then we ask them, “How can we help you to gain the skills to provide a better service?”

We have to educate our mukhis. They have to become part of the process. We need a community programme, because they may have the pre-supposition that we won't listen to women. So we have to say, “What are the elements of the mediation process,” for example, confidentiality . In Kenya all the heads of the institutions were involved, they were part of the programme. Thus we found we were in a better position if we needed to put on a course for divorced women.

This is our hope: to get a modern ADR process based on Islamic principles which fits the contemporary needs of British life.

The discussion did not include specific reference to issues of gender and power, which emerged from the Bradford data as central to an understanding of the conflict and of its resolution. However these quotations show an awareness of the impact of power structures and of gender stereotypes on the dispute resolution process.

In conclusion, the Ismailis have used and valued the model of mediation offered by NFM, and developed it to embrace explicit Islamic values about the family, the individual and the community. They acknowledge the limitations and need for development in indigenous methods of CR in their communities, and have an explicit 'elicitative' approach in training which respects local tradition while offering western skills as sources of enrichment.

We have said to those imparting the skills, that is, the trainers, “If you are going to come and teach us to use the scalpel and the drill, remember first that the finest chair you are helping us to construct must be set in the cultural context”.

When we go to Pakistan or to India, we say first to our mediators, “What do you think will work in this society? How can the screw-driver be used in a different context, and differently?”

The Ismailis locate the practice of mediation in a wider conceptual framework of social and economic analysis of the community in which mediation is being developed, and address issues of how the family can be sustained during and after divorce. They acknowledge variations in belief, acculturation and economic advance in the different Muslim communities of the world. They argue that the particular reforming and modernising ethos of Ismaili Muslims enables them to engage with western ideas in constructive way, which yet retain their own Islamic values and traditions.

This case study attempted to analyse the outcome of an attempt to see how far the western model of mediation, and the skills and concepts developed as an inherent part of the model, could be useful to an Islamic community. It also reviewed the first attempts to introduce these approaches to Muslim communities world-wide that had their own established methods of conflict resolution. It is useful to enhance this discussion by referring to a current theorisation of potential principles for interpersonal dispute resolution models that could be useful in an Islamic context. Abdalla (2000/1) reviewed the western literature on conflict resolution, emphasising the culture critiques in a framework broadly similar to that outlined in Chapter 1 of this thesis. In particular he explored the themes of

third party intervention, the neutrality of the third party, and the individual versus relationship focussed approach. He argued that these models of conflict resolution need not be dismissed despite the validity of these critiques. He attempted, as did the Ismailis in this case study, to identify principles, models, techniques and skills that could properly inform an Islamic model, and to exclude elements that are bound by western cultural traditions. He identified Galtung's triangular model of conflict as particularly appropriate to Islamic settings since it does not limit its focus to the parties directly engaged in the conflict, but acknowledges social interdependence and community involvement in interpersonal matters. He argued that the model also explained structural and institutional injustices and abuses, an approach that he argued would militate against the risk of keeping Muslim communities under age-old traditions and practices of oppression and repression.

Abdalla reviewed Islamic literature relevant to conflict and argued that Islamic sources are rich in conflict resolution principles, values and models which are based on a 'culture of relatedness' (2001/2:152). He argued that this culture requires that successful conflict resolution in an Islamic community must draw on the community to become involved in the process of intervention. In terms of the scope of the conflict resolution agenda, he advocated that Islamic ADR has to encompass social justice and social change within its parameters, and employ not only the language of *fikh* but also of morality, justice and accountability. In his view ADR thus becomes geared to social justice and to social change, 'liberating Islam from the doctrine and cultural elements which subjugate its followers to political and social oppression' (200/2001:159). Abdalla argued that an Islamic ADR model would therefore have three key elements:

- Restoring Islam to its messages of social justice and freedom.

- Engaging the community in the conflict resolution process.
- Adjusting the intervention techniques to the conflict situation and its stages.

Abdalla's preferred model was not tested out in practice in a Muslim community, but provided insightful confirmation of the findings of both case studies on which this thesis is based. He acknowledged that all Muslims do not necessarily adhere to their religious norms when confronted with conflict situations and that many adhere to secular value systems in interpersonal affairs. This was broadly born out in the Bradford case study, and therefore it is necessary to test out, early in the process of mediation, whether the parties want an Islamic model of mediation. The conflict may, as the data showed, reveal inappropriate cultural practices masquerading as religion, and the mediator may need access to religious leaders who can assist the parties in education. This comes close to the approach adopted by the Ismailis, where faith teaching, conflict resolution processes and social, educational and economic support are seen as integral to success.

Abdalla selected Mitchell's model of mediation as appropriate for the engagement of the social network in the conflict resolution process. He also identified the usefulness of the contingency and complementarity models of Fisher and Keashly, since they acknowledge mediation as having one role among many in the resolution process. He argued that the principle underlying Fisher and Keashly's approach at the international level is that of the interdependence of states, which requires the engagement of actors from the international community. In the same way, in Islamic settings, interdependence at interpersonal levels makes defensible the engagement of actors from the community.

In summary, Abdalla argued that the challenge for Muslim conflict intervention is to 'push their community forward while clearing their Islamic values from centuries long

confusion and pollution' (2000/2001:181). This model of an Islamic ADR process usefully validates some of the tentative conclusions arising from the Ismaili case study. It also contributes to the theorising of an Islamic ADR model in a Muslim community such as exists in Bradford, where cultural practices emerge as central to the conflict process and where issues of social justice and social change have to be addressed as integral in its resolution.

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CHAPTER SIX

Conclusions

Introduction

Bloomfield (1995) argued that practitioners in specific dispute contexts can contribute to a critique of generalised models of conflict by describing their own approaches and producing a strategy specific to their own dispute. They can examine the dynamics of attempts to address conflicts in a particular situation, make explicit why these strategies were used, and by what criteria they were chosen. Bloomfield called these 'embedded criteria'. In simpler terms, the questions to be addresses are: what are the particular features of this conflict; what were the criteria that influenced the choice of approach; and what were the aims of the intervention? This method of analysis is adopted in this study in relation to the resolution of divorce disputes in a particular ethnic minority group, and the discussion is structured around the following questions:

What are the distinctive features of these disputes as revealed in the data?

What resolution approaches were chosen, with what aims and with what results?

What theories of conflict and of conflict resolution challenged these approaches, and what theories might provide a different frame of reference?

Bloomfield argued that the task of the researcher is to observe the actions and processes of those involved in different approaches to conflict resolution, to ask why they chose one approach rather than another, and to help define the aims. In this research I had no opportunity to observe conflict resolution processes in action, either within the family,

in the wider community, or in the process of family mediation with parties from this ethnic minority, delivered in a local family mediation service. The analysis is based on what participants said they experienced (in the indigenous processes), or on arguments from research and experience of general principles of family mediation (in ethnic UK family mediation services). The data that comes closest to yielding information about a considered and principled approach to a mediation model that is religiously and culturally sensitive, is derived from the Ismaili case-study. These mediators acknowledge that they are still at a tentative stage of defining and implementing a workable model of mediation, that is appropriate for religious communities in different cultures world-wide.

What are the distinctive features of the divorce conflicts described in this research?

Private and public disputes

The single feature that distinguishes these conflicts from those analysed in most conflict resolution literature, is their semi-private nature. The conflicts and the resolution processes described in this research are almost entirely hidden from public view in the sense that in the wider community public shame is attached to divorce. The behaviour is known about but is associated with shame, self-blame and public denial, and therefore is not easy to address at the level of public policy. Attempts to resolve the conflicts are contained within the family, and considerable shame and disapproval is attached to attempts to move them to a more public arena. This is in contrast with the visibility of conflicts at inter-state, or intra-state levels. Such conflicts become the object of outside intervention when certain characteristics of the dispute become apparent. For example, the level of violence may become unacceptable, children may emerge as innocent victims of the conflict, and/or the regional balance of power and access to key resources by major power may be threatened. In divorce disputes, it is not easily apparent that these disputes are inherently destructive, or

that there are obvious victims. The suffering of the participants and of their children is often not heard, or is interpreted in the light of normative explanations for marriage breakdown and family change. As discussed in Chapter 2, these explanations are contested. Those who explain family change as due to the assertion of individualism, against which the family needs to be safeguarded, will adopt a different approach towards the resolution of disputes during this process, from those who see the changes as due to the assertion of choice against an oppressive institution. Galtung (1989) defined the three elements of conflict that he saw as essential for a dispute to be defined as a full conflict. The conflicts described in these data can be analysed comprehensively by including the elements of structure, attitudes and behaviour. But because these features are semi-hidden, and the results often seen only by professionals in the fields of law and social welfare, the conflicts can be ignored or redefined. In divorce conflicts, the interpretations of its significance vary widely, and a definition that appears to be neutral may involve the owner of that explanation in the dispute. These explanations, as has been argued, are grounded in cultural and gendered discourses.

In summary, the data suggest that among the parties to the dispute and among those who provide means for the resolution there is no clear consensus about the nature of marital and divorce disputes, about the means for resolving them, or the ultimate aims of the process. The family and the community aim to keep the couple together as far as possible to avoid family and community shame.

Interpersonal disputes

The second distinctive feature of these disputes is that they are interpersonal. Unlike conflict at the international level these disputes turn on the marital relationship and its attendant values. The nature of the relationship between the disputing parties within the

structure of their society affects the way the dispute is presented and negotiated. The data show that whatever were the objective issues in the disputes, such as finance, property and children, the disputes were grounded in cultural assumptions about marriage and the family, in which complex dynamics of ethnicity, gender and religion were played out. The disputes are also intra-familial, a feature that defines them from the majority society, so that mediation is also addressing intra-group conflicts.

The question was posed, early in this research, of whether conflict resolution could be seen as pan-social, (across all levels of society), as well as pan human, (across all classes and cultures). In exploring the data, one had to search for theories that would explain the behaviour of the participants to the disputes. The most useful theories were those drawn from the field of sociology which attempted to locate changes in family and individual behaviour, in the context of wider changes in society. These theories derive from observation about western, post-industrial society and are therefore not always relevant to an ethnic minority group still adapting from a rural society. However the question is raised of which theoretical fields can yield the insights helpful to understanding conflict at the interpersonal level. The tentative conclusion to be drawn from this research is that conflict resolution theory and practice needs to find the conceptual space for insights from sociological theory and cultural and social practices if it is to be effective in intervention at local and domestic levels. At its present stage of development, conflict resolution theory and practice is of limited usefulness in moving from macro to micro levels without adequate theorisation of the importance of individual identity, including religion and gender as well as culture, and the ways in which these relate to structural change.

Asymmetric conflicts

The third, and possibly most unexpected feature of these conflicts was their asymmetric nature. The analysis of the data demonstrated the inadequacy, in family mediation, of the theorisation of power and gender, and of cross-cutting issues such as the culture of gender. It has shown how structural factors, and religious and cultural assumptions, constrained and defined the choices open to men and women in marriage and divorce. The data suggest that we cannot see these disputes as conflicts of interest between relatively similar parties. The roots of the dispute lie not in the particular interests or issues between them, but in the very structures that govern self-definition, the nature of the marital and parental relationship, and the place of marriage within the family. This raises uneasy questions for the mediator. Is the conflict defined as asymmetrical, even if one or both of the parties does not perceive it to be so? Curle (1971) saw the scope of conflict resolution as including raising awareness of the asymmetry (conscientization), and confronting the powerful to achieve a more equitable re-distribution of power. It is possible to acknowledge within this strategy that the costs for the 'powerful' of maintaining the asymmetry, may begin to be unacceptable. The data suggest that some men could see that the price of maintaining traditional gender roles was high, especially when their own access to economic success was limited.

We return to Curle's and Lederach's (1995) definitions of conflict resolution as transformative, that is, that both the structural causes of the conflict as well as the manifestations in the conflict itself are addressed. But if the reality of local divorce disputes in Bradford is that they that are largely hidden and their significance is disputed then the question is raised: Who confers the legitimacy for intervention at the structural level? From where do the resources come for this level of social intervention? Boulding's (1977) criticism of Galtung asks similar questions: What may be the costs in terms of

individual freedom? Does mediation see itself as challenging social structure, or maintaining its stability?

At the local level, the data show that that challenges and counter-discourses are developing, and are generated from within the local community, not from within the mediation field. The closeness of the mediation project to the Legal Services Commission, and its funding from that body, is such as to make it difficult for it to develop a mediation approach that encompasses a transformative agenda. One of the conclusions drawn in the Report to the LSC (Davis et al, 2000) is that if the 'objective of mediation should be "transformative" rather than settlement orientated ... it is obviously open to debate whether this is an objective on which public money should be spent' (2000:136). This does not deny the importance of Curle's and Lederach's model in conceptualising the nature of asymmetric conflicts, but local realities in these conflicts suggest that it has significant limitations. If family mediation adopted the transformative model, it would have to rethink its position inside its present semi-legal setting, and consider in what context it could effectively address conflicts that are both complex and grounded in structural factors. It would have to consider its complementarity to other forms of community intervention, and, more importantly, articulate points of divergence and convergence with them. Mediation would have then to define its own project boundaries.

Cross-cultural and inter-cultural conflict

Fourthly, these conflicts are, to use the terminology of Avruch and Black(1993) both cross cultural and intercultural. They are cross-cultural in that we are mapping conflict and modes of conflict resolution in a single cultural tradition, but intercultural in that some of the participants have been raised in a multi-cultural society, while others have been raised in Pakistan. This broadens the context to include two individuals or groups from different

cultural settings, and contributes insights to the theorisation about the cultural context of conflict resolution, which largely focuses on the relevance on Euro/North American models to single cultures.

The data show how culture, and religion as an aspect of culture, pervades the way that marriages are established, the gender roles in marriage, the ways divorce is managed, and the provision and support for post-divorce family life. A striking finding of the research was the extent to which the structures of marriage and the family can only be understood in the context of patriarchal structures that still have their roots and histories in Pakistan. This finding raises further questions of theory and of process for mediation in the context of divorce. Lederach's (1995) five assumptions, on which he argued that the western model of mediation is based, have already been summarised (Chapter 1). The data show the extent to which the norms and community expectations in which marriage and divorce are based, differ fundamentally from assumptions that are taken for granted in ethnic UK society. In particular they demonstrate that these marriages are deeply embedded in a network of relationships, and that the participants often could not make decisions without reference to that network. The two key questions to arise from these embedded criteria are, 'Who is the appropriate third party?' and 'Who are the concerned parties?' (Encarnacion et al. defined concerned parties as those whose agreement is needed for any settlement to succeed.) The data lead me to a qualified agreement with Shah-Kazemi (1996), who argued that the third party who is outside a particular culture, would be seriously disadvantaged, at crucial stages of the process. 'Knowledge about' this minority culture is profoundly dissimilar from seeing their life experiences through the culture lens.

The data suggest that not all participants said they wanted a mediator who was a Muslim. Nevertheless, there was a perception that ethnic UK mediators would have to struggle

against their often unconscious stereotypes about Muslim family life, and could be hurtful to participants at a very intimate level of their experience. If the difficulties that could be experienced by ethnic UK mediators in these disputes are accepted, the more contested question of who is an effective third party is then faced. Shah-Kazemi referred to the 'natural helpers' in the community as those most appropriate for this role, but the data suggest that this is a more complicated issue that might appear at first sight. The participants in this research were not passive recipients of their home culture, but were trying to find a path between the norms of the culture in which they had been raised, and their indigenous culture. Many used Islam as route that could guide their search for a reflexive and adaptive way of living. The Ismaili case study suggests a way of devising a method of conflict resolution in divorce appropriate for Muslim minorities living in non-Muslim states. Their model is a clearly articulated one that uses members of that community as mediators, and helps them to work out a prototype that combines both Islamic principles and western skills and practice. This is a model chosen in preference to the one offered by the traditional *mukhis*. It is closer to the observation made in one of the community interviews, that members of the Muslim community in Bradford tended to turn to members of that community who were seen as traditional Muslims, but who had been successful in adapting to English society, and had achieved standing in it.

I have argued that the embedded criterion of the *asymmetrical* nature of the conflicts suggests that the process of family mediation needs to move away from the favoured service delivery model, towards one that engaged in a principled way with other forms of community provision. The embedded criterion of *culture* suggests that mediation has to move away also from its assumptions of 'outsider neutral' mediation to one that can work with 'insider partial' mediators from the ethnic group. The issue for mediation then

becomes an exploration of whether this can be done within the framework of accepted mediation principles, and of the often implicit values of male/female equality, the rights of children, and equality before the law, on which mediation in England is based. Poulter posed this dilemma as a question: 'Are there limits to cultural pluralism?'

Approaches to conflict resolution observed in these data: aims and results.

The conflict resolution methods experienced by these participants would be hard to locate in any accepted definitions of such approaches. It comes closest to what Miall et al define as 'conflict settlement' (1999:21), aiming to reach an agreement that puts an end to the violent stage of conflict behaviour, but without addressing conflict attitudes and underlying structural contradictions. The process here described often ignored or justified violent behaviour, and used coercion against weaker parties. Most participants experienced the aim of the indigenous process of conflict resolution as being to save the marriage and thus to preserve the network of economic and social arrangements in which the marriage is embedded. It may be that this has been effective, within these given aims, but the growing number of divorces in this community and the increasing use of the legal system suggest it is not, and there is growing perception that it is not.

It is here that the Ismaili case study brings valuable and creative ways of conceptualising a model of conflict resolution that is culturally and religiously sensitive. While giving priority to the mediation process, to Islamic principles, and to the importance of preserving marriage and the family as the basis of the community, they have located mediation in the broader context of community regeneration. The attitudes of key providers of support services, education, and financial help are also engaged in the process of rehabilitating divorced parties and ensuring their continued contribution to the

community. While acknowledging the significant differences between Ismaili Muslims and the community in Bradford, the Ismaili experience provided an example of the ways in which western methods of conflict resolution may be used in an elicitive way to inform, and in turn to be enriched by, Islamic traditions of ADR.

The ethnic UK model of mediation has already been analysed, and its difficulty in engaging ethnic minority users discussed. It has been argued that in practice it aims at the settlement of issues achieved by distinctive ways of reaching that settlement. In theory, and possibly in some areas of practice, it incorporates elements of conflict resolution since it tries to change the way people relate to each other, so that post-divorce parenting takes place in a less conflictual atmosphere. The debates within mediation about the relative importance to be attached to each aim have been discussed. Family mediation has never seen as one of its goals engagement with the structural issues that affect the conduct of disputes, and has addressed issues of culture, gender and race in relatively limited ways. Family mediation, in partially acknowledging the difficulties it has encountered in engaging ethnic minority couples has, in some areas of England and Wales, employed insider mediators from the ethnic minorities to address this issue. In some geographical areas this has had some success, although not in Bradford. The findings from the data about the pervasive and gendered importance of the local power structure indicate the factors that may have contributed to mediation's lack of success in achieving its aims. The data suggest that the setting for mediation, its organisation, the way it is promoted in the community, who backs it and who does not, what support services are available for the weaker party during the process of mediation, all affect the take-up and use of the service. Family mediation has rarely been soundly based in the grass-roots communities in which it operates, at the theoretical level it has failed to address in any depth how local hierarchical

power structures and wider structural issues may invade the mediation process. In this local ethnic community many issues such as child abuse, gay and lesbian issues, domestic violence, and support for post-divorce couples, remain hidden from view, and therefore have found it hard to attract support for applications for funding. In failing to theorise about the importance of power, family mediation is hampered from engaging in disputes where these issues are of central importance.

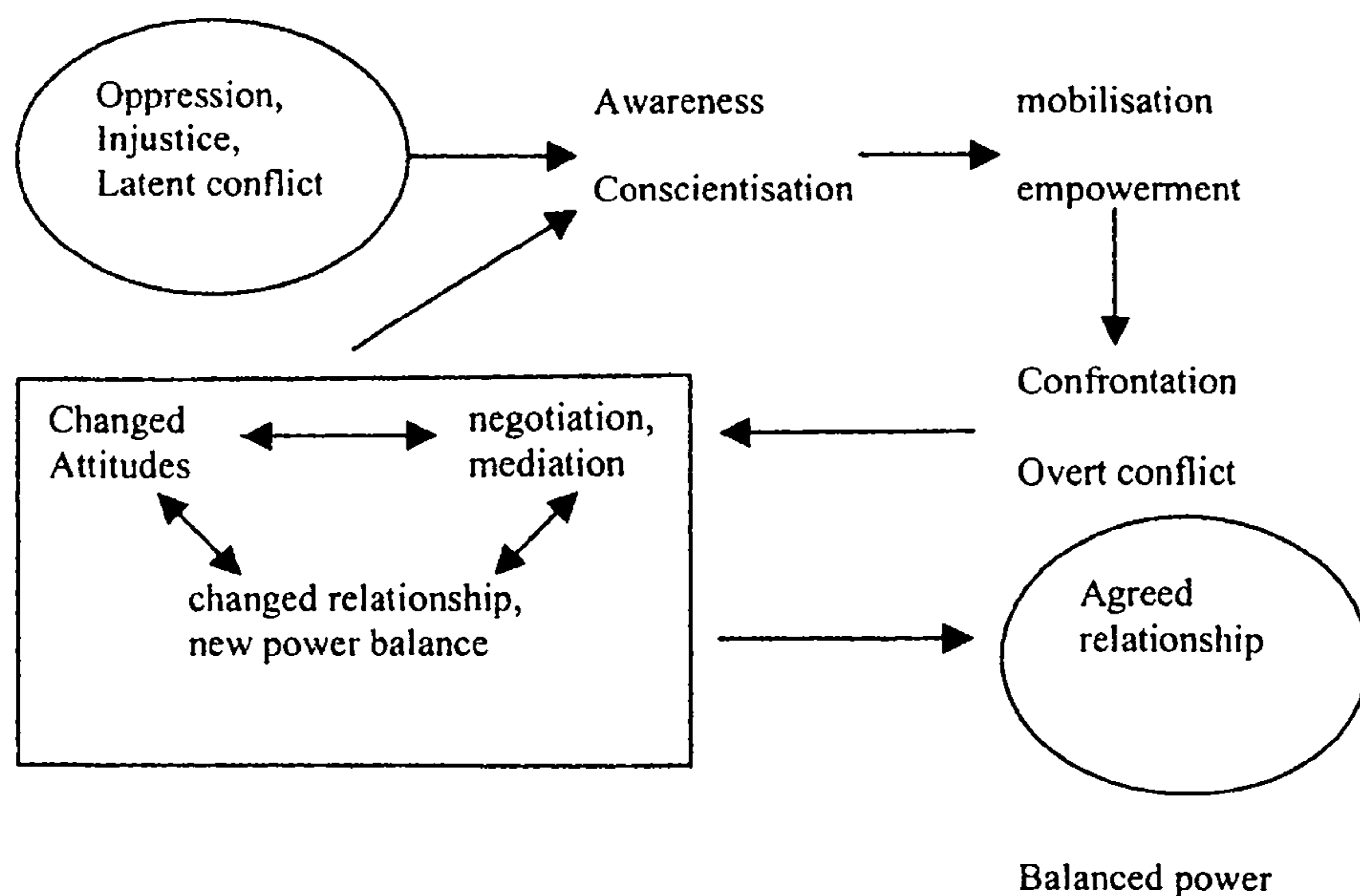
To summarise, the distinctive embedded criteria of these disputes have not informed either the ethnic UK model of mediation offered locally, or the indigenous methods that were evident in this research. It is therefore appropriate to ask:

What theories of conflict and of conflict resolution challenge these approaches, and provide a framework for a re-invigorated approach that takes into account the embedded criteria?

An argument has been developed throughout this thesis for the usefulness of the transformative model of conflict resolution. That model is briefly summarised here: it took a wider view of conflict than simply engaging with the participants to resolve the issues in a non-violent way; it addressed the three components of Galtung's triangle, (structure, behaviour and attitude) and saw conflict as arising out of social change; it also argued that indirect or structural violence is as important as direct violence. This model saw the process of social change as one that can be resolved non-violently, as hitherto marginalised groups are helped to articulate their interests and to challenge existing norms and power structures in a non-violent way. It implied a deep transformation in the parties and their relationships and in the situation which created conflict. It is 'the deepest level of change in the conflict resolution process' (Miall et al, 1999:21).

It is a theory that allows conceptual space for the transformation of asymmetric conflict, and for the inclusion of concepts of culture, gender and power in the process of defining and resolving conflicts. Lederach's theorisation of peacebuilding as a long-term, multi-dimensional and dynamic approach contained elements of empowerment and transformation. It argued for the empowerment and recognition of grass roots wisdom and counter-discourses, and for the elicitive methods of conflict resolution appropriate to that community. The theories of power developed in the field of critical theory, and their accommodation into traditional conflict resolution theory allow it to engage with the discourses of power in society that pervade the conflicts themselves.

The conflict transformation model of conflict resolution may be expressed diagrammatically thus:



Source: Miall et al. 1999, quoting Frances, 1994

Miall et al noted that the elements contained in the rectangular box are those seen traditionally as the essential parts of the conflict resolution process. These embody the boundaries of family mediation as practised in England and Wales, although the argument has been made throughout this thesis that the increasing adoption of the settlement approach is excluding the resolution elements of changing relationships and creating a new power balance.

Theoretically this is a neat model that enables the conceptualisation of a way of addressing most of the embedded criteria of the divorce conflicts that have been outlined. It offers a rich and adaptive model that could reinvigorate the family mediation model and its relevance to a multi-cultural society. If this model is applied to the resolution of disputes at the micro-level, there are obvious questions as to whether so radical a project could be developed within the organisational and financial constraints of the family mediation services as they exist at the moment. However there are more telling criticisms of the generic usefulness of the model across all levels of society. It assumes some level of consensus that the conflict is destructive and has to be addressed, or the political will that can impose a particular view of a conflict. Neither of these conditions necessarily apply at the local level. The nature of the divorce conflict, its structural roots, and the preferred outcome of the disputes, are contested not only in this particular ethnic community, but also among ethnic UK society. The legitimacy of so wide-ranging a project would be hard to establish, and ultimately would have to be articulated in the context of cultural norms about the family, about personal choice and about human rights. A possible way out of this dilemma would be to conceptualise the boundaries of conflict resolution as including the recognition and support of voices in the community that oppose violent and coercive ways of resolving conflict, or who have effectively identified and challenged the structural roots

of the conflict. As Fisher and Keashly (1991) argued, this acknowledges that mediation cannot effectively address all facets of a complex conflict, and therefore can be most effective when it works complementarily with other forms of social intervention.

It is hard to see how the aims of the transformative model of conflict resolution can be defined and its success evaluated. This is the core of Bercovitch's (1996) criticism of the resolution model and the conceptual difficulties in evaluating its success. It is also a criticism made by Lawler (quoted in Miall et al, 199:44), that the expansion of the conflict resolution agenda may acquire 'the qualities of an intellectual black hole'. One of the key questions to arise from this criticism is: Who defines the aims of conflict resolution? At the local level, is it the funding body, the professionals who have an interest in divorce and its outcome, or the users themselves? If we are to follow the empowering and recognition norms of the transformative agenda, especially in relation to indigenous cultures, then the narratives heard in research such as this must be given respect and credibility. The participants in this research were asking for fora in which their cultural and religious norms are afforded the acknowledgement and significance that is given to them by the parties themselves (in itself an elicitive practice that allows for differences of gender, generation and religion). They wanted fora in which disputes are heard in the structured and impartial process that is the key characteristic of mediation, and where abusive or coercive behaviour is challenged in a way that is within cultural norms. At the early stages of the marital breakdown, cultural factors suggest that the marriage-saving agenda is a powerful one, especially for women in this ethnic minority. The conflicts heard in this research are complex, with many core parties.

It is useful to return here to the model suggested by Fisher and Keashly who argued that since conflicts are, by their very nature, complex, each stage of the conflict requires an

appropriate type of third-party intervention. This complementarity approach is now developed into an intervention sequence that will address both the embedded criteria outlined above and the particular issues outlined in this research. Reference was made earlier to the development of problem-solving workshops, using third-party consultation as a distinctive response to certain types of conflict (Fisher 1983, Burton 1982, Mitchell and Banks 1996). This model will now be explored as a useful approach in the first stage of developing a culturally sensitive approach to divorce mediation in the Pakistani Muslim community in Bradford.

This research has highlighted the failure of the main mediation providers (the NFM service in Bradford) to engage this group, and a hypothesis is advanced to explain this. The research has shown the weaknesses of the indigenous model of conflict resolution and located it in cultural and religious traditions that are both challenged within this ethnic group, but which also are important in preserving group identity in a relatively hostile majority society. The collaborative approach to problem-solving (CAPS), outlined by Mitchell and Banks (1996) offered a first stage of intervention that could address some of these issues. Essentially, CAPS aimed to provide a disinterested, professional and non-coercive forum in which the conflict may be analysed and discussed. It was an academic exercise with a commitment to analysis and research. Representatives of those involved in the conflict were invited to a series of meetings with a panel of facilitators, usually with expertise in the analysis and dynamics of conflict. The participants were given the opportunity to stand aside from the conflict in which they are engaged and to think about it creatively and objectively. It worked on the assumption that only the parties to a problem can unmake it, and encouraged grass-roots voices as well as those of leaders to be heard. Fisher and Keashly (1988) clearly distinguished this type of third-party intervention from

mediation, and in particular differentiated the consulting relationship from the working relationship that the mediator attempts to establish. It has already emerged from the data that there is, in this community, no consensus about the nature of the family conflicts revealed in the study. A consultation/workshop that invited representatives of established mediation providers, of ethnic minority members professionally engaged in this area, and of individuals whose personal experience gives them direct experience of divorce and separation, could facilitate a joint analysis of the problem. It could examine current weaknesses in provision and explore the structural roots of the conflict. It would also enable the current NFM providers to begin the process of sharing and assessing their own model of mediation. The consultation process would facilitate a way of looking at marital and divorce conflict in a way that recognised different areas of competence among the participants and of moving beyond established ways of resolving the conflicts. In one crucial respect, the problem-solving workshop would be different from those analysed by Mitchell and Banks, and Fisher and Keashly, in that the participants are not the parties to the dispute, but rather those who may be instrumental in devising an appropriate conflict resolution process.

Nevertheless, the problems analysed by Mitchell and Banks in the conduct of the workshops are highly relevant to the issues likely to be raised by their implementation in Bradford. These anticipated problems can be deduced from the data. Who should be invited? How would issues of power and gender in the workshops be addressed? How are leaders and resource holders to be involved? How are the outcomes of the discussions to be fed to the group or constituency in their work or home environment? What would be the nature of the consulting panel that would give most credibility? Fisher and Keashly acknowledged that this endeavour to engage in face-to-face confrontation of issues is

unfamiliar, and that the potential rewards have to be identified early in the process, 'most importantly the non-committing, low-risk nature of the problem-solving workshop' (1988:387). This preliminary stage of intervention distinguished consultancy from the mediation process, but in encouraging the community to define the issues that are important to them, it built into the sequence of intervention an element of transformation and empowerment.

If CAPS is successful in encouraging and enriching the grass-roots dialogue about marital and divorce conflict, it is useful to reflect on what the data have shown to be the most appropriate model of mediation for this community. Fisher and Keashly argued that we should try to match the type of third-party intervention to the characteristics of the conflict, what they called the 'contingency' approach, which acknowledges the dynamic process of the conflict and develops strategies from a wide range of options. The data suggest that a model of mediation would have to address the following issues:

Cultural assumptions are crucial to success in engaging the parties. There are, for example, different expectations of the third party. What are the advantages and disadvantages of insider/partial as opposed to outsider/neutral? Who are the concerned parties who need to be involved in the resolution process? What embedded values, such as the importance attached to "marriage saving" need to be acknowledged? Where is the process located in terms of Islamic values? How may practice at each stage of the negotiation process need to be changed to acknowledge cultural differences?

The Ismaili case study suggests that it is important to expand the intake stage so that the familial and cultural dynamics can be explored properly, particularly where parties are of different cultures but the same religion, and when the immigration generation may be different. The age, gender, religion and status of the mediator are shown to be of

importance in establishing credibility at this stage. It may be useful to introduce a stage of consultation before mediation begins, as a crucial intervention stage that allows parties to articulate their own preferences and needs, so that assumptions about gender and culture-sensitive outcomes are clarified early in the process.

The *asymmetric nature* of these conflicts, the power dynamics in the family and community have been shown as crucial issues in the conflict resolution process. The sequence of intervention would have to be informed by sensitivity to such questions as: Where is the service to be located? Who funds it and who manages it? How will vulnerable parties perceive its impartiality, confidentiality and provision of safety? The data showed that access to information about the law and benefits were vital to men and women going through divorce; it is argued that mediation has to engage effectively with grass-roots workers who are attempting to improve access to these resources which affect the nature of decisions made during divorce. The model of mediation developed by the Ismailis includes a view of mediators working with the community providers of services that encourage the social and educational rehabilitation of parties after divorce.

It has been shown in the data that there is an unavoidable issue of the use of force and violence to sustain marriages in this community, although there is no way of estimating its prevalence. Fisher and Keashly argued that it is important to recognise when 'pure mediation', of the type practised by main mediation providers can usefully be supplemented by power mediation or 'mediation with muscle'. They related this to the stage of conflict when the use of threats escalates into attacks of violence by the adversary, and when basic needs of security and identity are threatened. There is no provision in the UK model of mediation for this type of intervention, and characteristically such cases are referred to the courts. Yet participants in this research have referred to family members

who they think could have exerted financial and physical pressure to stop domestic violence, an intervention that could have protected the women and avert the shame attached to using the law.

Accounts of conflict resolution processes in other cultures (Duffey 1998) show insider-partial mediators exerting considerable leverage, through bribes and coercion, in ways that restore and preserve the intricate web of relationships in which the marriage is embedded. Merry (1982) argued that we have ignored the very important role of coercion and power in small-scale pastoral societies, and have insufficiently considered the substantial impact of social organisation on the mediation process. Fisher and Keashly argued that, following the introduction of power mediation at an appropriate stage in the mediation process, consultation could again be offered to improve the relationship and re-evaluate the conflict.

A possible sequence of intervention in divorce disputes in the Pakistani Muslim community in Bradford would therefore incorporate the following elements;

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A proposed model of intervention in divorce disputes within the Muslim community in Bradford

	Problem	Type of third party intervention	Concerned parties	Outcome
1.	Inadequate/inappropriate provision of family mediation in Muslim families	<p><i>Consultation</i></p> <ul style="list-style-type: none"> • Facilitate diagnosis of conflict • Analyse nature of existing provision – strength and limitations 	<p>Community workers/“natural leaders”</p> <p>Religious leaders/teachers</p> <p>Service providers (formal/ indigenous)</p> <p>Users</p>	<p>Joint analysis of problem</p>
2.	Defining a culturally acceptable model of family mediation	<p><i>Consultation</i></p> <p>Elicit indigenous processes</p> <p>Elicit ‘formal’ (mediation/legal) processes</p> <p>Elicit Islamic processes and values in conflict resolution</p>	<p>Religious/community leaders</p> <p>Service providers</p> <p>Community workers</p> <p>Users</p> <p>Muslim academics/ practitioners from outside the community</p>	<p>Agreement on a model of family mediation appropriate to Muslim community</p> <p>Agreement on:</p> <p>Islamic model of CR</p> <p>Referral systems</p> <p>Location/ funding of ‘service’</p>

	Problem	Type of third party intervention	Concerned parties	Outcome
3.	Engaging Muslim families in family mediation processes	<p><i>Consultation</i></p> <p>At referral stage, elicit</p> <ul style="list-style-type: none"> • Commitment to Islamic processes and values; request for Islamic model • Cross-cultural issues • Marriage-saving agenda • Concerned parties to the dispute • Appropriate third party • Issues of violence • Criteria for a fair settlement 	<p>Engage Muslim religious teachers/ mediators</p> <p>Refer to Relate or Islamically based counselling service</p> <p>Engage kinship networks</p> <p>Contract with advice/ support agencies/ legal advice</p>	<p>Agreement to mediate</p> <p>Referral to marriage counselling</p> <p>Support/ protection of weaker party</p>
4.	Conducting a culturally mediation process	<p>Situation-specific <i>mediation</i>, 'pure mediation' and/or 'mediation with muscle'</p> <p>'Orchestration' of different types of intervention,</p>	<p>Mediators in community with power of coercion/ persuasion</p> <p>Support/ advice providers in community</p> <p>Indigenous mediators in the community</p>	<p>Redress balance in asymmetric relationships</p> <p>Challenge to cultural assumptions</p> <p>Redressing balance in asymmetric relationship</p>

4. (cont.)		<ul style="list-style-type: none"> • Insider mediator and/or outsider mediator • Liaison with support agencies • Engaging concerned parties • Establish how the process and its techniques need to be adapted. 	Kinship networks	Engage the community in CR Settlement of dispute Improved relationships in the family Empowerment of the parties
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This model addresses the following criteria:

- It engages the community at all levels in defining the disputes and preferred ways of resolving them.
- It provides a forum in which religious and cultural assumptions about marriage and the family, and their basis in Islamic values, can be clarified and, where necessary, challenged by informed and authoritative Muslim scholars.
- It gives importance to saving and repairing marital and family relationships.
- It engages the family and kinship network where appropriate.
- It addresses issues of violence and inequality, and engages community networks in defining and addressing the problem.
- It facilitates both the formulation of a model of mediation based on Islamic principles and also constructive challenge and education from Muslims outside the city.
- It facilitates the sharing of mediation skills developed by UK mediation providers, and recognises those of indigenous mediators.
- It acknowledges the need to adapt the mediation process to accommodate cultural factors.
- It recognises mediation as only one role in the conflict resolution process, acknowledges the complementary nature of other roles, and addresses the importance of integrating them.
- It openly espouses principles of justice, empowerment and equality in conflict resolution, and aims at the transformation both of relationships and of structures.

It may be helpful to explore how this model might be implemented.

The first stage of consultation is defined by Mitchell and Banks (1996) as offering a disinterested, professional forum in which conflict may be analysed and discussed, and where the voices both of community leaders and of grass-roots members of the community are heard. At this stage, the issue of power would be crucial in the Bradford situation, both in deciding who would take part in the consultation and in managing the meeting so that the voices of the powerful are heard, but are also balanced by alternative opinions. The experiences of some of the female community workers suggest that there has been a level of intimidation when they have challenged traditional assumptions in key areas of family and community life. The data suggest that it may be difficult to create a neutral space in which confidentiality is respected both in the forum and outside it. The difficulties encountered in the course of the research in engaging young men from the community suggest that if the voices of a younger generation of men, and of those who have recently come from the Indian sub-continent to marry, are to be heard, there will have to be in place strategies for their engagement, and provision for linguistic diversity. These could take place in fora outside the consultation, of which the outcomes could be fed into the first stage. These are crucial and potentially highly conflictual issues, and it may be realistic to accept that a linear series of group consultations will not be the pattern. Rather, the first stage could be a forum in which to test what Fetherston (1997) calls the vitality of networks in the community, who has access to public debates, and what is openly discussed about family change and gender roles in the community.

The second stage need not sequentially follow the first, and could be a separate initiative if the first stage proves to be too conflictual. Drawing on what Augsburger calls the 'emic' or 'etic' approaches to culture (either describing the culture in its own terms, or imposing external categories 1992:35), the consultant(s) could elicit both local understandings of divorce conflict ('the local pathways or strategies' 1992:36), while bringing in a fundamental knowledge of practices in conflict resolution that could be applied cross-culturally. This exercise could be conducted through the medium of a conflict resolution of mediation training course that offered established skills in mediation across a variety of settings, (community, divorce, organisational), that allowed for the exploration of cultural norms and their implications for the practice of mediation. These courses could be offered in either formal educational settings, or in community based facilities such as community centres, health centres, or schools, or in work based settings. They would be open both to ethnic UK citizens and to ethnic minority citizens, who can thus acquire new skills and a recognised qualification. Experience with adult education and community education projects suggest that provided they are linked to specialist help in areas of linguistic competence and domestic responsibility, and are linked to agencies that have established credibility with those groups, they can empower individuals and groups who have had only limited access to formal education. Such courses could also offer validated education and training in conflict resolution to middle level leaders, such as those who participated in the community interviews.

From these training and education initiatives could emerge a definition of mediation that explored and articulated the concerns that have been expressed in this research. For divorce mediators they are: the issue of a marriage

saving agenda; the preferred type of third party (insider, outsider but from the same ethnic group, UK ethnic): the involvement of 'concerned parties'; issues of safety and violence; access to information about divorce law, benefits and community resources. This group of potential users and of middle level leaders could contribute to the key stage of engaging users from the Pakistani Muslim community of the mediation option. This could also be the forum in which the optimum 'service provider' was identified, bearing in mind the opinions offered in this research, that funding and control of the project have to be transparent, and that security is offered for spouses who fear intimidation and violence.

In summary, this model is not offered as a neat blueprint for a new type of service delivery. Rather it offers an over-arching model of a principled and culturally sensitive conflict resolution process, which allows for intervention in the form of limited projects within that process, implemented over time, and with continual re-evaluation. Family mediation is thus returned to what Bush and Folger call its empowerment and transformation roots, and to the task of deriving the definition of aims from the community in which it is located. This does not deny the contested nature of the way in which the conflict is seen, but allows different voices to be heard in the shaping of the mediation agenda, both as a process and in its part of what the Ismailis call the 'regeneration project'.

Mediation would thus have to clarify both its aims and its normative values. In so doing it would locate itself in political and social debates, some of which are highly sensitive in the current racial and political climate in England. Abdalla's theorisation, and the Ismaili programme, suggest that engagement in these sensitive areas of injustice and oppression are seen as central to effective conflict resolution by Islamic academic

conflict resolution scholars and practitioners. This is a major challenge that carries with it the risk of political controversy. It also offers the opportunity of developing a responsive form of conflict resolution that has the potential for a principled and realistic engagement with the multi cultural society of Britain.

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